

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:

CG INVESTMENT CO.

and

AMERICAN UNIVERSITY

Case Nos.

00-39 MA

00-36 CP

Thursday
April 5, 2001

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case Nos. 00-39 MA
and 00-36 CP by the District of Columbia Zoning
Commission convened at 7:00 p.m., Carol J. Mitten,
Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN
ANTHONY J. HOOD
KWASI HOLMAN
JOHN G. PARSONS

Chairperson
Vice Chairperson
Commissioner
Commissioner

COMMISSION STAFF PRESENT:

Alberto P. Bastida, Secretary, ZC
Gerald Forsburg, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning
Julie Wagner, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Mary Nagelhout, Esq.

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PAGE NO.

Preliminary Matters	4
Presentation of Applicant's Case	14
Presentation of the Citizen's Associations	
Robert Elliot	38
Pamela Heyne	46
Robert Herzstein	56
Priscilla Holmes	61
Charles Ruttenburg	69
Paul Duke	78
Questions from the Zoning Commission	82
Witnesses in Opposition	
Tonya Hamilton	127
Michael Hurst	141
Jane Khoury	148
John Cristaldi	151
Andrew Harris	166
Manuel Fernandez	171
Wes Egan	178
Dennis Paul	191
Heather Jean	198
Charles Hamilton	206
Joseph Alphonso	209

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P-R-O-C-E-E-D-I-N-G-S

(7:01 p.m.)

CHAIRPERSON MITTEN: Good evening, gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, April 5th, 2001. My name is Carol Mitten. Joining me this evening are Vice Chairman Anthony Hood and Commissioner Kwasi Holman.

Notice of today's hearing was published in the D.C. Register on February 9th, 2001, and in The Washington Times on February 3rd, 2001. This hearing will be conducted in accordance with the provisions of 11 DCMR •3020.

The subject of this evening's hearing is Zoning Commission Case No. 00-39 MA, a map amendment at Massachusetts Avenue between Fifth and Sixth Streets, N.W., from HR SP-2 to DD C2-C. The order of procedure will be as follows: preliminary matters, applicant's case, report of the Office of Planning, report of other agencies, report of the Advisory Neighborhood Commission, which is 2C, parties and persons in support, parties and persons in opposition regarded by the applicant.

All persons appearing before the Commission are to fill out two witness cards. These

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1 cards are located at each end of the table in front of
2 us. Upon coming forward to speak to the Commission,
3 please give both cards to the reporter sitting to my
4 right.

5 The decision of the Commission in this
6 case must be based exclusively on the public record.
7 To avoid any appearance to the contrary, the
8 Commission requests that persons present not engage
9 the members of the Commission in conversation during
10 any recess or at any time.

11 The staff will be available to discuss
12 procedural questions. Please turn off all beepers and
13 cell phones at this time, so as not to disrupt these
14 proceedings. At this time, the Commission will
15 consider any preliminary matters.

16 Mr. Bastida, do we have any preliminary
17 matters?

18 SECRETARY BASTIDA: Yes, Madam
19 Chairperson. We have the affidavit of maintenance.
20 The applicant seems to have complied with the
21 regulations regarding the maintenance of the
22 affidavit. And the staff would recommend that -- that
23 the applicant -- the applicants have satisfied the
24 Zoning regulations.

25 CHAIRPERSON MITTEN: Very good, thank you.

1 And aside from the applicant -- the representatives
2 of the --

3 VICE CHAIRPERSON HOOD: Madam Chair -- oh,
4 finish your statement.

5 CHAIRPERSON MITTEN: Aside from
6 representatives of the applicant, are there any
7 persons present in support or in opposition? I don't
8 see anyone. Mr. Hood, did you have --

9 VICE CHAIRPERSON HOOD: Oh, thank you for
10 recognizing me, and excuse me for interrupting. Madam
11 Chair, I had read through the materials. I believe
12 that the record is sufficient.

13 And unless my colleagues have any
14 questions, I am ready to make a motion.

15 COMMISSIONER HOLMAN: I concur.

16 VICE CHAIRPERSON HOOD: I make a motion
17 that we approve Zoning Commission Case No. 00-39 MA,
18 CG Investment Incorporated.

19 CHAIRPERSON MITTEN: Is there a second?

20 COMMISSIONER HOLMAN: Oh, I second.

21 CHAIRPERSON MITTEN: Excellent. We have a
22 motion and a second to approve Case No. 00-39 MA. All
23 of those in favor, please say "aye".

24 ALL: Aye.

25 CHAIRPERSON MITTEN: Those opposed, please

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1 say "no".

2 (No audible response.)

3 CHAIRPERSON MITTEN: Thank you. Mr.
4 Bastida, would you record the vote?

5 SECRETARY BASTIDA: Yes, the staff would
6 record the vote three to zero, Mr. Hood moving, and
7 Mr. Holman seconding, and Ms. Mitten voting on the
8 affirmative.

9 CHAIRPERSON MITTEN: Thank you. And Mr.
10 Glasgo, will be you be providing findings of fact and
11 conclusions of law? And do you think you could have
12 those by Friday, the 13th of April?

13 MR. GLASGO: Yes.

14 CHAIRPERSON MITTEN: Very good, thank you.
15 I now declare this public hearing adjourned.

16 (Whereupon, the proceedings went off the
17 record at 7:04 p.m. and resumed at 7:31 p.m.)

18 CHAIRPERSON MITTEN: Good evening, ladies
19 and gentlemen. Welcome back. Tonight, April 5th,
20 2001, we resume the public hearing of the Zoning
21 Commission for the District of Columbia for Case No.
22 00-36 CP, the Campus Plan and three further processing
23 cases for the American University.

24 This case is being continued from February
25 15th, February 26th, and March 15th, 2001. My name is

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1 Carol Mitten. Joining me this evening are Vice
2 Chairman Anthony Hood and Commissioners Kwasi Holman
3 and John Parsons.

4 Before we proceed this evening, I would
5 like to begin by asking that all beepers and cell
6 phones be turned off so as not to disturb this
7 hearing. I would also like to remind you not to
8 engage the Commissioners in conversation so as to
9 avoid any *ex parte* communication.

10 Copies of the hearing agenda are available
11 to you and are located on the table near the door.
12 When we adjourned the last time, we stopped just prior
13 to the parties and opposition commencing presentation
14 of their case. Well, actually, I guess we had -- they
15 had begun their case.

16 Our goal is to conclude the hearing this
17 evening. If not, we will make an assessment at
18 approximately 9:30 p.m. as to whether we can conclude,
19 and whether another hearing date will be scheduled.
20 We have several preliminary matters that may affect
21 the manner in which we proceed this evening, so I'd
22 like to go to those at this time. Mr. Bastida?

23 SECRETARY BASTIDA: Yes, Madam Chairman,
24 there are two requests for party status.

25 CHAIRPERSON MITTEN: Thank you.

1 Commissioners, we have a request from Mr. David
2 Wilson, representing the Tenley Campus Neighbors
3 Association. And the reason that this request is
4 coming in at this time is because there was a problem
5 with notification; we heard about it last time.

6 And we have received some correspondence
7 on the subject having to do with the neighbors within
8 200 feet of the Tenley Campus receiving proper notice.

9 And I believe Ms. Dwyer has no objection to Mr.
10 Wilson and --

11 MS. DWYER: That is correct.

12 CHAIRPERSON MITTEN: Thank you.
13 Commissioners, what are your thoughts about Mr. Wilson
14 being named a party in this case?

15 VICE CHAIRPERSON HOOD: Madam Chair, do we
16 have any parties that have any objections?

17 CHAIRPERSON MITTEN: Mr Elliott, Mr.
18 Herzstein?

19 MR. ELLIOTT: No, of course.

20 CHAIRPERSON MITTEN: ANC representatives,
21 any objections to the -- I don't see them here yet.

22 MR. DiBIASE: I'm actually --

23 CHAIRPERSON MITTEN: You need to come
24 forward.

25 MR. DiBIASE: Good evening, Thomas DiBiase

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1 for ANC-3E, because Leslie Quynn will be joining me
2 shortly, but she asked me to sit in. And we have no
3 objection --

4 CHAIRPERSON MITTEN: Very good.

5 MR. DiBIASE: -- to Mr. Wilson joining
6 this claim.

7 CHAIRPERSON MITTEN: Thank you. And is
8 Ms. Hamilton here yet? Okay, I think we can -- we can
9 go ahead. I think the answer to your question, Mr.
10 Hood, is no.

11 VICE CHAIRPERSON HOOD: Okay, thank you,
12 Madam Chair. That was the only question I had.

13 CHAIRPERSON MITTEN: I would move that Mr.
14 Wilson be named a party, representing the Tenley
15 Campus Neighbors Association.

16 COMMISSIONER HOLMAN: Right, second.

17 CHAIRPERSON MITTEN: We have a motion and
18 a second to approve the Tenley Campus Neighbors
19 Association as a party in this case. All of those in
20 favor, please say "aye".

21 ALL: Aye.

22 CHAIRPERSON MITTEN: Those opposed, please
23 say no.

24 (No audible response.)

25 CHAIRPERSON MITTEN: Mr. Bastida?

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1 SECRETARY BASTIDA: The staff will record
2 the vote four to zero, Ms. Mitten moving, Mr. Holman
3 seconding, Mr. Parsons and Mr. Hood voting in the
4 affirmative.

5 CHAIRPERSON MITTEN: Thank you. And we
6 have a request by Mr. Pollock to reconsider the denial
7 of party status that -- the denial of his request for
8 party status. We don't have anything in the rules to
9 provide for reconsideration.

10 Are any of the Commissioners inclined to
11 reconsider our decision on that?

12 VICE CHAIRPERSON HOOD: No.

13 CHAIRPERSON MITTEN: All right, any
14 inclination? Okay, thank you. Mr. Bastida, anything
15 else?

16 SECRETARY BASTIDA: Yes, Madam Chairman,
17 there is a request from Mr. Elliott about same-day --
18 same-day service.

19 CHAIRPERSON MITTEN: Yes, I think we read
20 the request by Mr. Elliott, and we read the response
21 by Ms. Dwyer. I think you've been adequately
22 accommodated in the -- in the delivery of documents.
23 And I don't think there is any -- there is any need
24 for any additional accommodation on the part of the
25 applicant.

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1 MR. ELLIOTT: Madam Chair, I concur with
2 your comments.

3 CHAIRPERSON MITTEN: Thank you. So,
4 you'll just proceed as you have been. Mr. Bastida,
5 anything else on preliminary matters?

6 SECRETARY BASTIDA: The staff has no other
7 preliminary matters, Madam Chairman.

8 CHAIRPERSON MITTEN: Thank you. Now,
9 there are a few --

10 MR. ELLIOTT: Madam Chair?

11 CHAIRPERSON MITTEN: Yes, sir?

12 MR. ELLIOTT: May I? I have a preliminary
13 matter. As you may recall, Ambassador Harab was
14 confused by the clock. No one told him how it worked.
15 He meant to take four minutes. He looked up at two
16 and rising, and he thought he had a few more minutes
17 and went into lead-base paint. Is there any
18 possibility of counting that as four?

19 CHAIRPERSON MITTEN: I think that it
20 wasn't -- it was a number of people's responsibility
21 to maintain the time limit on your -- on your first
22 witness to testify. And he used nine minutes, and
23 we're going to stick with that.

24 MR. ELLIOTT: May I ask also, you had
25 offered that he could just have been a three-minute

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1 witness outside our case. Would you be willing to
2 allow, on the specific property testimony of Mr. and
3 Mrs. Herzstein, that they make three-minute statements
4 in the public session?

5 Also, Mr. Duke has asked if -- he is
6 present and is one of the parties. But he has asked
7 if he could do that as well in order to -- not to
8 infringe upon the time.

9 CHAIRPERSON MITTEN: Here's what -- here's
10 the way I would like it to work, is Mr. Herzstein and
11 his wife have been granted party status, and they are
12 functioning as parties in opposition. And they're
13 part of your 51 minutes remaining.

14 If there's anyone else who had been part
15 of your case that you're going to now extract from
16 that and they're going to testify as a three-minute
17 person in opposition, that's fine.

18 But nobody who has been given party status
19 personally is going to be put in another category at
20 this time.

21 MR. ELLIOTT: All right.

22 CHAIRPERSON MITTEN: And I would also add
23 that -- and I believe there's been prior conversation
24 between the staff and the applicant -- that Mr. Wilson
25 is going to be given approximately ten minutes to make

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1 his case. And he's not -- his time is not going to be
2 counted against the collective time that you've
3 already been given.

4 MR. ELLIOTT: It is not?

5 CHAIRPERSON MITTEN: It is not going to be
6 counted.

7 MR. ELLIOTT: Well, thank you very much.

8 CHAIRPERSON MITTEN: All right? And is --

9 MR. ELLIOTT: That helps.

10 CHAIRPERSON MITTEN: -- the agreement?
11 All right, thank you. A few things that were left --
12 left over or that came up as a result of submissions
13 that we received; we had asked for briefs on the 1986
14 Tenley agreement, and whether or not it was within the
15 purview of the Zoning Commission to enforce that
16 agreement.

17 And I would ask Mr. Bergstein to speak to
18 that at this time.

19 MR. BERGSTEIN: Thank you, Madam Chairman.

20 I think there are two issues. The first is assuming
21 that there was a condition and, in fact, a campus plan
22 that would have restricted the applicant's use of its
23 campus, whether or not that condition would extend
24 through, or be binding upon, this condition when it
25 reviews the campus plan that is now before it.

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1 And I see nothing to suggest that this
2 Commission would be so bound; that in every case where
3 a campus plan is before the Commission, the prior
4 conditions that were in the campus plan are open for
5 the Commission to reconsider.

6 And they are not bound to continue any
7 particular condition that's in the prior campus plan.

8 So, whether or not there should be restrictions on
9 the applicant's use of its campus is something for
10 this Commission to decide at this time.

11 And any prior conditions that might have
12 imposed impediments on that are not binding upon the
13 Commission.

14 The other issue is what would be the
15 effect of agreements reached between the parties
16 concerning those same issues? And we do not believe
17 that parties can contract away this Commission's
18 jurisdiction to hear special exceptions.

19 The Commission, in hearing special
20 exceptions, is proceeding pursuant to a statutory
21 grant of authority. And the issue of whether or not
22 there has been a breach of an agreement, and what its
23 impact would be upon an applicant's ability to request
24 special exception relief is not something that is
25 within this Commission's authority to decide.

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1 It would be within a Court's authority to
2 decide. We have an applicant who believes that it is
3 entitled to proceed with special exception requests.
4 You have opposition parties who believe that, based
5 upon an agreement, they are not.

6 That is not something that we believe is
7 within the purview of this Commission to decide. It
8 can decide the merits of the application, but not
9 whether or not there is an independent, legal
10 impediment to it doing that was reached between the
11 parties.

12 CHAIRPERSON MITTEN: Thank you, Mr.
13 Bergstein. So, this evening, when we are hearing
14 testimony, we will not hear testimony as to the
15 legality of the 1986 agreement because it is not
16 within the authority of this body to decide the
17 legality.

18 But to the extent that you would like to
19 speak about the merits of the case, as embodied by the
20 1986 agreement, please do so.

21 We had another -- we had submissions
22 related to the exploring alternative sites for the
23 Katzen Arts Center. And as it relates to the Katzen
24 Arts Center and alternative sites for it, we would --
25 it's within the purview of this Commission to decide

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1 the merits of what has been proposed by the applicant
2 as far as the siting of the Katzen Arts Center.

3 If we decide that the Katzen Arts Center
4 is not appropriate for that site, we will not tell the
5 applicant where to place it. So, hearing testimony
6 about the -- about the desirability of other sites is
7 not helpful testimony.

8 So, if you go in that direction, I will
9 interrupt you and ask you to speak to the merits of
10 the Katzen Arts Center where it has been proposed.

11 There is an issues that's been raised by
12 Mr. Elliott. Just bear with me while I find my
13 reference. This issue was raised in Citizens
14 Association's brief in response to AU brief of March
15 15th, 2001, regarding selection of Cassell site.

16 And this is number six, "changed testimony
17 by letter and permissible and right to cross examine."

18 Mr. Elliott has raised the issue that, in your brief,
19 Ms. Dwyer, related to the Cassell site and the -- and
20 the -- basically using the Cassell site -- the Cassell
21 Building envelope as a benchmark against which to
22 measure the Katzen Arts Center -- you seem to be
23 arguing in favor of that in your brief.

24 Whereas, Mr. Abud, in his testimony,
25 specifically said it wasn't relevant. So, I need to

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1 ascertain what the position of the applicant is on
2 that, and whether or not Mr. Elliott is entitled to
3 cross examination on your position.

4 MS. DWYER: I believe that what Mr. Abud
5 said was that in the context of this campus plan, the
6 University did not do an extensive evaluation of
7 alternative sites.

8 What I did is just point out for the
9 Board's -- the Commission's information that, ten
10 years ago, that process was engaged in by the
11 University.

12 And at that point in time, the Cassell
13 site was deemed an appropriate site for development of
14 this size.

15 CHAIRPERSON MITTEN: I think I -- maybe I
16 didn't make my point clear enough, which is -- and
17 maybe I'll just read the section of the -- of the
18 transcript that's relevant.

19 Mr. Elliott asks, "Subject three, site
20 selection, can you explain on what basis you feel that
21 the Cassell Building envelope, as it's been called, is
22 a proper standard for judging your replacement
23 building, a new building at that site; I mean, the
24 general heights and position of the Cassell Building?"

25 And then, Mr. Abud responded, "I don't

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1 think there's any relationship, so I don't believe
2 it's a proper standard." Whereas, in your brief,
3 there's discussion about the relationship between the
4 Katzen Arts Center Building and the envelope of the
5 Cassell Building.

6 So, Mr. Elliott would like to discern what
7 your position is, because he is concerned that he
8 hasn't had adequate opportunity to cross examine on
9 what the position of the University is.

10 MS. DWYER: Well, then, what I would like
11 to do is call Jorge Abud back up and ask Mr. Elliott
12 to ask the question that he feels needs clarification
13 from Mr. Abud.

14 CHAIRPERSON MITTEN: Are you prepared to
15 do that, Mr. Elliott?

16 MR. ELLIOTT: Certainly, if that's how you
17 wish to proceed.

18 CHAIRPERSON MITTEN: Yes.

19 MR. ELLIOTT: Well, first, we need to hear
20 from Mr. Abud what the University position now is on
21 this point, and then I can cross examine. Would you
22 state what the position is, Mr. Abud?

23 MR. ABUD: The position is what I
24 testified to, that the Cassell Building isn't
25 necessarily a standard by which to measure whether or

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1 not a building on that site is appropriate.

2 It certainly is something by which people
3 who live behind it can judge whether something is
4 closer or higher. The building has been there for
5 more than 50 years, and people have gotten used to it.

6 So, I think, in that respect, it's often
7 used as a point of comparison. But I don't think that
8 it means that any new development that's proposed
9 there ought to fit within the envelope, or within the
10 height of that existing building, or that -- you know,
11 that it really is relevant, beyond just a general way
12 to be able to compare.

13 MR. ELLIOTT: Would it be fair to say,
14 then, that the new proposal that's before the
15 Commission should stand on its own two feet, in terms
16 of its size, mass, and whether it imposes on --

17 UNIDENTIFIED SPEAKER: Objection.

18 MR. ELLIOTT: -- or impacts upon
19 neighbors?

20 MR. ABUD: Yes.

21 MR. ELLIOTT: And are you also, at this
22 point, asserting that there is some relevance to the
23 size, mass, height and envelope of the law school
24 building in the last plan?

25 MS. DWYER: Madam Chair, I think that goes

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1 beyond --

2 CHAIRPERSON MITTEN: That's beyond -- that
3 is beyond.

4 MR. ELLIOTT: All right.

5 CHAIRPERSON MITTEN: Have you got any
6 other --

7 MR. ELLIOTT: That's finishes it.

8 CHAIRPERSON MITTEN: -- the issues that he
9 raised?

10 MR. ELLIOTT: I think he has clarified --
11 I withdraw that last question. I think he has
12 clarified what his position, which is very similar to
13 last -- previous answer.

14 CHAIRPERSON MITTEN: Yes.

15 MR. ELLIOTT: Thank you, Madam Chair.

16 CHAIRPERSON MITTEN: Thank you for calling
17 that to our attention. All right, in reviewing the
18 summary of your case, Mr. Elliott and Herzstein, there
19 were several issues that I would like to call out that
20 I would -- that I think are not appropriate for us to
21 hear testimony about.

22 Number ten in your submission of March
23 21st, which is Summary of Opponent's Evidence, which I
24 believe has to do with the legality of the private
25 contracts between the University and community groups

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1 and ANC-3E -- I think we covered that earlier.

2 But just to reiterate, we don't want
3 testimony about the legality of those. It's not
4 within our authority to enforce that. Are we clear
5 about that?

6 MR. ELLIOTT: I understand you're
7 excluding evidence on those contracts entirely. Or is
8 there --

9 CHAIRPERSON MITTEN: That's --

10 MR. ELLIOTT: -- is your ruling more
11 narrow? I'm not sure.

12 CHAIRPERSON MITTEN: No, it's more -- it's
13 actually -- we don't want discussion about the
14 legality of it because we -- that's not for us to
15 determine. But earlier, specifically in reference to
16 the 1986 agreement, if there is something in that
17 agreement that bears on the merits of the campus plan
18 that's before us, we want to hear that.

19 But we -- but we are not going to
20 determine whether those -- those agreements are
21 actually in force.

22 MR. ELLIOTT: All right.

23 CHAIRPERSON MITTEN: All right?

24 MR. ELLIOTT: In other words, if the --
25 some opponents believe they are, they can explain how

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1 that affects -- but they're not going to argue the
2 merits of whether the contract means this or that. I
3 think I understand.

4 CHAIRPERSON MITTEN: Right. And then, in
5 number 11, in your discussion about the proposed
6 parking plan that would be similar to Mount Vernon
7 Campus, you make reference to the fact that you want
8 the program to cover law students.

9 And we don't have the jurisdiction, in the
10 context of this campus plan, over the law students.
11 So, we don't want to hear testimony about something
12 over which we don't have jurisdiction at this time.

13 MR. ELLIOTT: May I be heard on that?

14 CHAIRPERSON MITTEN: Briefly.

15 MR. ELLIOTT: All right. The law students
16 use the main campus. And to that extent, it seems to
17 me there's enough nexus between them -- their many
18 uses of the campus, and the fact that some of them
19 park there and they take buses and so forth. There's
20 a single transportation system here.

21 So, I think that that would give you
22 jurisdiction to deal with the use of this campus. The
23 nexus is so close that you could sweep the law
24 students' parking into the overall parking condition.
25 That's our position.

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1 CHAIRPERSON MITTEN: And I understand
2 that, and I guess I would like you to be a little
3 creative about the way you present that so that you
4 speak more to the students who park on the campus, as
5 opposed to where they are -- where they're being
6 educated or how they're being educated.

7 I think the point is that they're parking
8 on campus. You want them captured. So, it doesn't
9 matter that they're law students. So, let's just not
10 -- let's not -- let's not discuss them as law
11 students. Let's discuss them as students who park on
12 campus. Is that fair?

13 MR. ELLIOTT: I think so. And you've
14 already heard testimony about students who park off-
15 campus without knowing who's who. So, that's a
16 general problem as well.

17 Incidentally, Mr. Ruttenburg wishes to
18 present to you the idea that you should expand the
19 campus to include the law school property.

20 CHAIRPERSON MITTEN: Well, and he can do
21 that when it's --

22 MR. ELLIOTT: He will.

23 CHAIRPERSON MITTEN: -- when it's his
24 turn. And then, under your discussion about further
25 processing, and you -- you make some reference to the

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1 relative merits of the Nebraska Avenue parking lot as
2 a possible site for the Katzen Arts Center, as I
3 mentioned earlier, that's not going to be productive
4 testimony for us. All right?

5 MR. ELLIOTT: The selection of the
6 Nebraska lot, you're excluding the testimony --
7 evidence on that?

8 CHAIRPERSON MITTEN: Right, but you had --
9 you had some good points in the beginning, as they
10 relate to the Katzen Arts Center Building on the site
11 where it's proposed. And we would like to hear that.
12 We just don't want to hear testimony about where else
13 it might go. All right?

14 MR. ELLIOTT: I don't know if I quite
15 follow that. You want us to critique the lot where
16 they are siting it --

17 CHAIRPERSON MITTEN: Exactly.

18 MR. ELLIOTT: -- without reference to the
19 fact that there might be less impacts on another lot?

20 CHAIRPERSON MITTEN: Correct. They
21 haven't proposed it for another place. Just deal with
22 it where it has been proposed.

23 MR. ELLIOTT: Is that also a ruling with
24 respect to the campus plan application? In other
25 words, you do not hear evidence about the site

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1 selection in the campus plan? I can understand --

2 CHAIRPERSON MITTEN: What do you --

3 MR. ELLIOTT: -- the further processing
4 more. But as to the campus plan, it seems to me
5 that's at the heart of it to figure out which
6 facilities go where.

7 CHAIRPERSON MITTEN: Well, unfortunately,
8 what we do is we vote what the University has proposed
9 up or down. We don't shuffle the pieces on the board.
10 And to the extent that they need to be shuffled,
11 we'll -- we'll tell the University, "Your
12 configuration doesn't work."

13 MR. ELLIOTT: Okay.

14 CHAIRPERSON MITTEN: And they'll have to
15 reshuffle them. We won't do that for them.

16 MR. ELLIOTT: I see.

17 CHAIRPERSON MITTEN: So, talking about
18 better places to put things isn't going to be
19 productive for the Zoning Commission.

20 MR. ELLIOTT: I understand. If I
21 understand what you're saying, if you're not satisfied
22 with either application, you can tell the applicant,
23 "Go work on it, come back."

24 CHAIRPERSON MITTEN: Yes.

25 MR. ELLIOTT: Either or both?

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1 CHAIRPERSON MITTEN: Yes.

2 MR. ELLIOTT: All right.

3 CHAIRPERSON MITTEN: All right? And then,
4 Mr. Bergstein, in your summary, there was a fair
5 amount of discussion about directing the parties to
6 return to a negotiating posture. And again, we would
7 like to hear testimony about the merits of the case.

8 If we get to the point where we can't
9 reach agreement, and it's desirable to send someone
10 back to the drawing board, then the University is --
11 knows where you are. And to the extent that they want
12 to negotiate, then they will.

13 But it's not going to be the posture of
14 this Commission -- we have a -- we have a decision --
15 we're collecting information through these hearings,
16 and we will deliberate. And to the extent that we can
17 make a decision without further information, we will
18 do that.

19 MR. HERZSTEIN: I understand that, Madam
20 Chairman. I was taking my cue from the very important
21 and ultimately successful experience that we had in
22 1987 to '89. As you know, at that time, the Board of
23 Zoning Adjustment took that approach.

24 And we simply wanted to call that to your
25 attention as an option. But obviously --

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1 CHAIRPERSON MITTEN: Okay.

2 MR. HERZSTEIN: -- it's up to you to
3 decide what to do.

4 CHAIRPERSON MITTEN: Right, and -- and we
5 understand that that's an option. But I guess in
6 terms of the time that you'll spend testifying this
7 evening, I think it's better spent on the merits of
8 the case, as opposed to the merits of going back -- of
9 sending you back to negotiate. We know that --

10 MR. HERZSTEIN: Okay.

11 CHAIRPERSON MITTEN: -- that's an option.

12 MR. HERZSTEIN: Thank you.

13 CHAIRPERSON MITTEN: Okay. Is there
14 anyone planning to testify this evening that has not
15 been sworn at any of the previous three hearings?
16 Please stand to take (sic) the oath, Mr. Bastida.

17 SECRETARY BASTIDA: (Administers oath.)

18 CHAIRPERSON MITTEN: I'd like to remind
19 you that all persons planning to testify need to fill
20 out two witness cards that are on the tables in front
21 of us. And you should hand the cards to the reporter
22 upon coming forward to testify.

23 And let me remind you of the time limits
24 going forward. The parties in opposition, as
25 represented by Mr. Elliott and Mr. Herzstein, have 51

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1 minutes remaining to present their case.

2 Then, Mr. David Wilson, representing the
3 Tenley Campus Neighbors Association, will have ten
4 minutes, as a party in opposition. Persons in
5 opposition have three minutes each.

6 There is a sign-up sheet in the back of
7 the room. There is a door in which those persons who
8 will testify in opposition can place their names.
9 Signing up will help us proceed through the individual
10 testimony in an orderly manner.

11 Now, I believe there is one thing
12 remaining. There was -- I believe, Ms. Dwyer, you are
13 making your witnesses available to Mr. Wilson for
14 cross examination this evening?

15 MS. DWYER: Yes. In the interest of
16 ensuring that we have a complete record, we have our
17 witnesses here. If Mr. Wilson have questions about
18 the Tenley Campus, the witnesses are here to be cross
19 examined by him.

20 CHAIRPERSON MITTEN: Okay.

21 MR. WILSON: Ms. Mitten?

22 CHAIRPERSON MITTEN: You need to come
23 forward, Mr. Wilson.

24 MR. WILSON: I am David Wilson, and I just
25 wonder what the order of things is going to be

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1 tonight. Would we -- are we going to do the --

2 CHAIRPERSON MITTEN: I'd like you to begin
3 with the cross examination of the applicant's
4 witnesses if you're prepared to do that.

5 MR. WILSON: Okay. I need to go to my car
6 and get one thing. So, it may be better if the
7 opponents can go first.

8 CHAIRPERSON MITTEN: All right. So, we'll
9 -- we will allow Mr. Elliott and Mr. Herzstein to
10 continue -- to complete their presentation. And then,
11 you'll come up, and you'll do the cross examination,
12 and then present your --

13 MR. WILSON: Okay, thank you.

14 CHAIRPERSON MITTEN: -- your case.

15 MR. WILSON: And another preliminary
16 matter is that we move that the -- so much of the
17 campus plan application, as it pertains to the Tenley
18 Campus, be remanded to the University on the grounds
19 that they have failed to satisfy the burden of
20 demonstrating that this campus plan, as far as it
21 pertains to the Tenley Campus, would not raise
22 objectionable conditions for the neighborhood.

23 This is a seriously vague plan. To the
24 extent it is specific, it is seriously flawed. It is
25 a plan that would increase, by over 200 percent, the

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1 number of parking spaces and --

2 CHAIRPERSON MITTEN: I'd rather -- I'd
3 prefer that you not argue your case right now.

4 MR. WILSON: Well, I'm making a motion.
5 And if you don't want to hear argument on it, that's
6 fine. But I make the motion because I think on the
7 basis of reviewing the transcripts and of looking at
8 the plan, I find no support for carrying the burden
9 that is the University's burden to show that this plan
10 would not raise objectionable conditions for the
11 neighborhood.

12 There has been no neighborhood input in
13 the -- on this. It's sure to raise objectionable
14 conditions.

15 CHAIRPERSON MITTEN: Ms. Dwyer?

16 MS. DWYER: To the extent that Mr. Wilson
17 has substantive objections, they can do that as part
18 of their testimony. I think the record is very clear
19 in what we filed, that the community surrounding the
20 Tenley Campus has been involved in this process from
21 the beginning.

22 What we filed in the record were copies of
23 the chronology of meetings that have taken place
24 between the University and the community beginning in
25 January of 2000.

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1 A representative of ANC-3E, which includes
2 the Tenley neighbors, as well as a representative of
3 the AU Park Citizen Association, participated in all
4 of those meetings.

5 When the Office of Planning suggested
6 facilitation, Leslie Quynn, who is the ANC-3E
7 representative, participated in that process.

8 To the extent that these particular
9 neighbors were not advised by their ANC representative
10 or the AU Park representative of the Tenley Campus
11 proposal, or did not attend the many community
12 meetings, that is not any fault of the applicant.

13 The University went out of its way to be
14 inclusive and to make sure every community
15 organization was part of this process.

16 CHAIRPERSON MITTEN: If I may just respond
17 to the motion, one of the things that the Commission
18 will rule on is whether, in fact, after -- after we
19 hear all the testimony, whether the University has met
20 its burden of proof.

21 So, I think we'd like to take your motion
22 under advisement, and that will be among the things
23 that we deliberate and rule on ultimately.

24 MR. WILSON: I was just trying to save
25 some time because --

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1 CHAIRPERSON MITTEN: I understand. You
2 need to speak into the microphone.

3 MR. WILSON: I was simply trying to save
4 time because I don't believe they've carried their
5 burden. And I think it's appropriate to just send it
6 back to them.

7 CHAIRPERSON MITTEN: I understand, thank
8 you.

9 MR. DiBIASE: I wonder, Madam Chair, if I
10 may make a point on behalf of ANC-3E, because my
11 understanding is this came up at the last hearing.
12 And that is sort of the idea that ANC-3E represents --
13 simply because someone lives in that neighborhood, or
14 an organization of people, a group of people, live in
15 that neighborhood, that ANC must -- ANC-3E must
16 represent all of those viewpoints.

17 And I want to be very clear that that is
18 not -- that's certainly not the ANC's position. We
19 have to represent everyone in ANC-3E. And as you
20 know, simple practicalities, that must mean that some
21 viewpoints are necessarily excluded because we don't
22 agree with them or because they represent, you know
23 perhaps a minority view, and the best example being
24 that certainly people within 200 feet of the Tenley
25 Campus would have one view of a plan, whereas people

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1 who live two or three blocks away would have a
2 probably very different view.

3 So, I just want to be clear that, from the
4 ANC's position, we don't necessarily represent the
5 specific view of the -- of the group of neighbors that
6 Mr. Wilson represents.

7 So, it's not -- it's not fair to simply
8 say that because 3E, specifically Commission Quynn and
9 Commissioner Gordon were involved in those meetings,
10 that therefore, the views of other smaller groups,
11 with maybe diverging opinions, that their opinions
12 must necessarily have been represented, or that it's
13 incumbent upon ANC to sort of let everybody know
14 here's what's going on.

15 And we have monthly meetings. We have a
16 website. So, there is some communication. But I
17 don't want it to be misconstrued that ANC-3E's
18 participation means that other, smaller groups, or
19 different opinions, that their viewpoints are
20 necessarily included in what we state to the
21 Commission.

22 CHAIRPERSON MITTEN: I think I understand
23 it. But all the folks that -- that are within the
24 area that the ANC encompasses are given an opportunity
25 to express their views in public meetings, correct?

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1 MR. DiBIASE: Yes, now, I think -- now,
2 with the granting of this group, specifically, as
3 party status -- but whether that means that because
4 the notification provisions, I think admittedly here,
5 were not -- were not followed for some reason, or were
6 not noticed -- proper notice was not given, I don't
7 think the University can say, "Well, it doesn't really
8 matter because ANC-3E was at the meeting, and all of
9 these people live in 3E."

10 My point is merely that people with a
11 different opinion or a divergent opinion from what the
12 ANC ultimately comes to in a vote at a public meeting,
13 that their viewpoints may never have been represented
14 to us, or maybe have never been made known to us. So,
15 I --

16 CHAIRPERSON MITTEN: I think I understand.

17 MR. DiBIASE: All right.

18 CHAIRPERSON MITTEN: Thank you. We're
19 going to -- speak into the mic.

20 MR. WILSON: I'll make it very brief.

21 CHAIRPERSON MITTEN: Sure.

22 MR. WILSON: We didn't have notice from
23 the ANC either. And I think it may have been a
24 function of the fact that the Chair of the ANC turned
25 over. Ms. Quynn, as I understand it, just became

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1 Chair of the ANC.

2 Nobody in our neighborhood had notice
3 under -- for any of this. So --

4 CHAIRPERSON MITTEN: But there's a normal
5 procedure for giving people notice of ANC meetings.
6 And are you saying that that normal procedure was not
7 followed?

8 MR. WILSON: I never got notice of an ANC
9 meeting.

10 VICE CHAIRPERSON HOOD: Let me just
11 interject, Madam Chair, if I can. There are a number
12 of ways in which the new legislation on how to get the
13 word out to community folks is performed by the City
14 Council.

15 One of them is it has to be placed in two
16 conspicuous areas that's heavily traveled. That may
17 have been done. It's not necessarily guaranteed that
18 you're going to get one on your doorstep.

19 So, I'm not saying they did or didn't.
20 But there are a number of ways of which the community
21 can be notified.

22 CHAIRPERSON MITTEN: Thank you.

23 MS. DWYER: And Madam Chair, the only
24 thing I wanted to make clear for the record, whether
25 or not this particular group of neighbors did, in

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1 fact, have notice, it was not through any fault of the
2 University.

3 The University has been communicating with
4 these groups. It had the working group meetings. It
5 attended the ANC meetings last spring. This has been
6 in the Northwest Current, in all of the newspapers.

7 The applicant posted the property and
8 provided staff with the correct list of names. So, I
9 just want the record to be clear --

10 CHAIRPERSON MITTEN: Right.

11 MS. DWYER: -- that the University did
12 what was required and beyond.

13 CHAIRPERSON MITTEN: Right, thank you.

14 MR. RUTTENBURG: Madam Chairman?

15 CHAIRPERSON MITTEN: Sir, if you have
16 something to say that's relevant to this particular
17 matter, please come forward, and identify yourself for
18 the record.

19 MR. RUTTENBURG: My name is Charles
20 Ruttenburg. I'm President of the American University
21 Park Citizens Association. Ms. Dwyer said something
22 about AU Park representing these folks. We do not.

23 Tenley has never been a part of the
24 American University Park Citizens Association. So, we
25 had no way of notifying them.

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1 CHAIRPERSON MITTEN: Okay, thank you. I
2 don't know how -- Mr. Elliott and Mr. Herzstein, I
3 don't know how you plan to present the balance of your
4 case. But whenever you're ready, please proceed.

5 MS. DWYER: Madam Chair, if I could just
6 make one other comment? In looking through the
7 materials that we just received from Mr. Elliott,
8 there are a number of exhibits that relate to issues
9 that you have said are not going to be before the
10 Commission tonight concerning the legality of the two
11 agreements.

12 And I would just like to have the
13 opportunity after tonight's hearing to review those
14 and to see whether some of these exhibits should be
15 excluded from the record.

16 CHAIRPERSON MITTEN: Thank you.

17 MS. DWYER: Thank you.

18 MR. ELLIOTT: We're ready, Madam Chair.

19 CHAIRPERSON MITTEN: Anytime.

20 MR. ELLIOTT: All right. Madam Chair and
21 Members of the Commission, I will begin briefly by --
22 and as Mr. Hood said at our last hearing, the Members
23 of this Commission do their homework, and we've seen
24 that.

25 I have submitted my opening statement in

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1 writing, a letter dated March 21. I'm not going to go
2 through everything in it. I want to, instead, go into
3 some specific facts that I think are of concern here.

4 The first question is, the Zoning
5 Commission has taken over the campus plan processing.

6 We assume this is to take a new look at it. From the
7 very beginning -- and it's no surprise -- I have
8 questioned whether this is a plan. In other words,
9 what does the Commission really want in a plan?

10 Is it enough to just take almost every
11 building site on a campus and designate a future
12 building on it, with very little guidance as to what,
13 how, or why, or when, or in what order?

14 If you'll look at Chart 1 on the board
15 here, you will see the projects left after the Arts
16 Center and the two smaller projects, which the
17 University wants to build initially, and the total
18 construction, there is 690,000 square feet of
19 additional construction that includes Building H-
20 170,000 conversion.

21 If you were to delete Building A and B as
22 Ambassador Schaefer urged, and as we urge, because
23 they're on the periphery of the campus, because they
24 strongly impact the neighbors to the south, you will
25 still have 610,000 square feet of construction

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1 proposed in this plan.

2 And note that the University, itself, said
3 it's not going to exceed 400,000 FAR. I've put down
4 the number 230 FAR. With reading the testimony, I
5 think actually you may have made a little mistake on
6 that because Cassell is a reduction of FAR.

7 So, you probably would have more like 270
8 left after the first phase. Turn to Chart 2, please.

9 Next, with that large amount of
10 construction, if you really look hard at this campus
11 plan, you will find that the uses are very loose.
12 They're very loosely defined. That came up in cross
13 examination February 26th, but I want to stress this.

14 A building will be defined on pages 31 to
15 34 of the application as "this use" or "that use".
16 And one of the buildings, the one down at Tenley, is
17 actually just defined as "multiple uses including".

18 I have, therefore, taken those concepts,
19 applied them to the buildings involved, and found that
20 the plan allows for us to 350,000 square feet of
21 administrative offices in this remaining site of
22 buildings; up to 450,000 feet of faculty offices or
23 more, because there are parts of two buildings that
24 can be faculty offices; and up to 600,000 square feet
25 of instructional space; and up to 150,000 square feet

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1 of housing.

2 It can't be all of that. This is overlap.

3 That's what I'm trying to point out. So that the
4 flexibility concept goes too far. And Madam Chair, if
5 I may remind you, when you sat on the Mount Vernon
6 Campus plan matter, by designation, there you saw a
7 campus plan that actually had five phases of
8 construction, and a plan that was expected to be
9 built; maybe not every bit of it, but a good part of
10 it.

11 It was feasible. It was expected. It was
12 a real plan, and it had five phases which enabled you
13 to see how it would unfold. Turn to Chart 3, please.

14 I might mention, Ms. Dwyer has filed a
15 revised land use, Exhibit 11. And we have found that
16 two of the buildings, because of these loose uses,
17 would be in the residential campus life part of the
18 land use, but actually could be used for unlimited
19 offices in one case and administrative offices in the
20 other.

21 This is, again, a problem of such
22 looseness of the definition of "use". And if you go
23 over to the Tenley Campus, you'll find that this new
24 land use chart happens to have that new building
25 straddle the two zones. Next chart, please.

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1 These charts are under Tab 2 of our book,
2 incidentally. The building use descriptions, look at
3 these. This is Table 4. And I'm sorry that Mr.
4 Franklin isn't here, but I think he will be
5 particularly interested in this point because lawyers
6 are very interested in how concepts are defined and
7 tied down.

8 This plan intentionally has a whole series
9 of overlapping and kind of odd descriptions of how
10 buildings are used. Look at the first six there:
11 academic office functions, then academic offices, then
12 housing academic programs, then academic facility use,
13 and then also classrooms and instruction.

14 Each one of these is different from the
15 other, and none is defined. And then, there is, in
16 page 31 to 34, the concept of multiple functions for a
17 100,000 feet at Tenley, including some certain ones.
18 But it could be anything.

19 And then, finally, there are three
20 different ways of defining administrative space, as
21 opposed to academic, and those are: administrative
22 support functions, but also administrative offices,
23 and also office use.

24 So, I think one problem with this plan is
25 by using such vague designations of how buildings will

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1 be used, it's a blank check. Next chart, please.

2 I would compliment the University on
3 trying to improve its center of its campus, eliminate
4 a road that dips under, made the quad and central area
5 better.

6 My point here is, nothing in their
7 proposal to you ties the authority they're asking for
8 to the concept they say they want to pursue. In other
9 words, they have a concept; they describe it. But
10 then, they just say, let us build any of these
11 buildings in any sequence or order at any time.
12 There's no tie.

13 Similarly, they have explained in detail
14 that they propose increased parking to accommodate an
15 increase in the current student and faculty and staff
16 level up 25 percent. They have put in 500 more
17 spaces.

18 However, they ask for a population cap now
19 that would permit going up 25 percent from where they
20 are. But it doesn't tie at all to construction or to
21 providing those parking spaces.

22 And similarly, they propose new housing.
23 But again, the population that they seek has no tie to
24 actually doing any of that housing. Next chart,
25 please.

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1 And if you look back at the '89 plan
2 compared to this plan, you'll notice -- and it caught
3 my eye the first time I read this application. In a
4 number of their projects, they say, oh, there was a
5 project in '89 on this site. There was a project in
6 '89 on this site.

7 But let's take a look at some of these
8 projects that were there in '89 compared to now.
9 Project A was 25,000 feet. Now, it's 30,000 and the
10 uses have changed.

11 Project B has a different footprint, and
12 the uses have changed. Project D has changed uses.
13 Project E was 15,000 feet -- Ms. Dwyer is sure to
14 correct me if I'm wrong, but 15,000 feet. Now, it's
15 100,000 feet with 260 cars.

16 Project F was 50,000 feet. Now, it's
17 100,000 feet on a different adjacent site. Project G
18 was 700 feet, and now it's 10,000 feet.

19 Project H was a garage, and it's turned
20 into habitable space, as we know. Project K was
21 15,000; now it's 50,000 with a garage, a different
22 footprint and greater height.

23 And of course, Project L has a different
24 use, and a garage underneath, and a different
25 footprint, and different heights, mass and size. Next

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1 chart, please.

2 I had put in the book a longer list, but
3 here are some of the tools available to the
4 Commission. One, eliminate projects. I think this
5 application cries out for it.

6 Number two, set priorities; have the
7 University tie what it proposes to do to carrying out
8 its goals. It can do that with population, by keying
9 to what the University said it needs. It says it's
10 not going to have growth; it's going to have
11 fluctuations.

12 It can reduce -- you can reduce the size
13 of buildings. You can define those uses better. For
14 instance, a 100,000 square-foot building, you might
15 require that not more than a certain percentage be for
16 office. You could break up those multiple uses into
17 some allocation; maybe not right to 100 percent, but
18 some maximum just to get some idea what those
19 buildings are going to be used for.

20 And more important, you could have real
21 definitions of uses. These are not real definitions.

22 And again, I hope Commission Herb Franklin, as a
23 trained lawyer, looks at the definitional aspect of
24 that because all lawyers define things. That's how we
25 do it.

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1 And you could tie the plan to goals, tie
2 it to the goals that AU has. Next, I'm going to call
3 Pamela Heyne, an expert who has been already qualified
4 with respect to the Arts Center, which is twice as
5 wide as a Wal-Mart or a K-Mart. I sent my assistant
6 to measure one of each.

7 Ms. Heyne, are you ready? It might become
8 known as Art-Mart.

9 (Laughter.)

10 MS. HEYNE: I'll need three easels.

11 MR. ELLIOTT: Can you stop the clock for a
12 second?

13 CHAIRPERSON MITTEN: Could you stop the
14 clock, please?

15 MS. HEYNE: I think these should be seen
16 by the audience too. I think that's a way of doing it
17 both --

18 MR. ELLIOTT: Can you see them from there,
19 Madam Chair?

20 CHAIRPERSON MITTEN: Yes, we can.

21 MS. HEYNE: How about Mr. Holman; you're
22 the farthest away?

23 COMMISSIONER HOLMAN: I can see perfectly.

24 MS. HEYNE: My name is Pamela Heyne. I'm
25 with the architectural firm of Houston & Heyne,

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1 Associated Architects, in Georgetown. While I hate to
2 admit it, I've been practicing architecture for well
3 over 25 years. I'm a graduate of Yale School of
4 Architecture.

5 I was asked to review the proposal of
6 American University to build an Arts Center building
7 on the north side of Mass. Avenue across from the main
8 gate of American University.

9 The proposal must be judged under the
10 zoning regulations applicable to campus plans,
11 ••210.2, the 1989, 1990 campus plan, in relation to
12 various sections of the Ward 3 comprehensive plan.

13 I note •1406.9(b) of the Ward 3
14 comprehensive plan which states, "Relate the size and
15 proportions of new construction to the scale of
16 existing buildings." In other words, any new building
17 in this area shouldn't be overly obtrusive or
18 intrusive.

19 Now, one of the main problems with this
20 building is its length. It stretches a distance of
21 660 feet, east to west. That does not include the
22 sunken art gallery.

23 As an interesting comparison, it is 40
24 feet longer than the Kennedy Center. Now, of course,
25 the Kennedy Center is rimmed by the Potomac River,

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1 high-rise buildings, and major roads.

2 This building, of course, is rimmed by the
3 special street of Massachusetts Avenue and single-
4 family residences. Another thing to note about this
5 building, which obviously -- perhaps it's an unfair
6 comparison, and naturally it's bigger than these
7 residences.

8 But additionally, it is much bigger than
9 any building on campus in terms of length. It is far
10 longer than any of the other buildings on the campus.

11 Now, another aspect about it that I find
12 troubling is a certain height that seems unnecessary.

13 And one area that I object to tremendously is the
14 parapet along Massachusetts Avenue. Here it is,
15 delineated in the elevations. Here it is, also
16 delineated by the red lines.

17 Now, most parapets -- most people know a
18 parapet is a wall that sticks up above a roof.
19 Typically, a parapet is about a foot high. This
20 parapet is 11 feet high.

21 I'm not quite sure the reason for that
22 because this is not where the mechanical equipment is.

23 It was probably done for aesthetic reasons, whatever
24 they may be. On the other hand, what it winds up
25 being is an unrelieved white wall that is 200 feet

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1 long.

2 Another aspect of the building, of course,
3 apart from the height, is its bulk. Much of the bulk
4 is a result of -- let's flip this up -- a lot of empty
5 space, light wells, as you were. Here's a light well,
6 another light well, another light well; light wells
7 throughout.

8 And this is a very high student lounge
9 area. Now obviously, there is certainly a need for
10 gathering spaces and everything. But the fact that it
11 has to have this many levels in it to create a light
12 well, I wonder -- I think, perhaps, this could have
13 been re-thought inasmuch as it impacts their neighbors
14 to this extent.

15 This is a rear view of it, of this
16 particular rotunda. And I did not put the Exxon sign
17 on; however, the neighbors obviously felt they needed
18 to do that, because obviously, that's what it looked
19 like to them.

20 Now additionally, this -- the fence is 7-
21 foot-6 high, higher than the standard garden fence in
22 the District. And as you can see, it's a very
23 different appearance from the more standard, mere yard
24 effect here, which shows open views, a much more open
25 view of trees and that sort of thing.

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1 Now, I want to get back to this drawing
2 here because it's also illustrative of a certain
3 amount of misleading visual information, which I
4 believe has been the case.

5 Some of the residents have complained,
6 from Ft. Gaines in particular have complained, that
7 they've only seen a study model, a rough study model.
8 And models are typically not brought to meetings.

9 The building is typically shown in
10 perspective highly fore-shortened, either from this
11 direction or from the other direction.

12 Additionally, these elevations do not show
13 the full height of the building. Nowhere on the
14 elevation do I see the garage, which is obviously a
15 three-lane entrance into this building. Nor does it
16 show any of the steps coming up.

17 This particular perspective drawing does
18 show some steps. However, if you compare it to this
19 illustration, you will see, for instance, there are
20 one, two, three landings here. Here, we have two
21 landings.

22 Now, perhaps, this was an early phase.
23 Maybe they hadn't quite worked it out. On the other
24 hand, I believe this building was -- this drawing was
25 produced about the same time this drawing was

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1 produced. So, it seems to me there should be
2 consistency.

3 Also, the garage is shown with the door
4 closed. I would suspect that much of the time, it's
5 going to be open. I would also suspect that it is
6 going to be highly visible from the street-scape,
7 certainly at night.

8 I also wonder, just as an aside, how the
9 handicapped will be gotten into the building. Perhaps
10 many of them will go in that way, or perhaps --
11 perhaps they would come up this way. I'm not sure.
12 That's one element of it. It's just a very minor
13 curiosity I have about it.

14 Now, this particular segment of the
15 municipal regulations, 210.2, "Uses of college
16 universities should be located so as not likely to
17 become objectionable to the neighboring property
18 because of noise, traffic, number of students, or
19 other objectable conditions."

20 I do know I would not want to have this in
21 my backyard. And the trees are shown -- I believe,
22 frankly, they should be higher. They've been
23 described as being 12 feet high. And we're told they
24 would certainly not screen the building the way the
25 planners would like them to be screened.

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1 And certainly in the summertime, they will
2 be casting more shade in the backyard than certainly
3 is the case now. Anybody who is a serious gardener
4 will have to re-think their whole approach.

5 So, finally, in summation, this is the
6 building located on one of the most important streets
7 in America, and a building proposed to be built on one
8 of the most important streets in America, one of the
9 most beautiful streets in America.

10 It's an inspirational street. I love
11 driving by and seeing that CK]d Churchill -- I love
12 the British Embassy. I love -- and of course, there
13 are modern buildings as well. The Finnish Embassy is
14 one of my favorites, which is beautifully screened and
15 forested to keep the forested character.

16 Additionally, the Brazilian Embassy --
17 it's perpendicular -- a modern structure,
18 perpendicular, and almost disappears, perpendicular to
19 this magical, wonderful street.

20 And the American University -- and I use
21 that intentionally, it is -- it is -- it has an
22 important name. It's on an important street, and I
23 think it has an important mission. Thank you.

24 MR. ELLIOTT: Thank you, Ms. Heyne. Just
25 for the record, the drawing that has the rendering is

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1 American University's -- one of their two renderings.

2 But Ms. Heyne has drawn more of the
3 building off to the right, and there is still the Art
4 Gallery farther to the right of that. So, that
5 rendering is part of the building.

6 Next, we have Michael Bilecky. I'm going
7 to pass up to the Secretary copies of his longer
8 statement. He's going to summarize. Go ahead, Mr.
9 Bilecky.

10 MR. BILECKY: I'm Mike Bilecky, President
11 of Ft. Gaines Citizens Association. Ft. Gaines
12 acknowledges benefit from having an arts center
13 located on the Cassell site, and we have openly
14 supported the concept.

15 However, the Ft. Gaines Citizens
16 Association voted unanimously on February 6th to
17 oppose the further processing of the Katzen Arts
18 Center as it's currently designed.

19 Nothing that has been presented since our
20 vote alters our objections. In 1989, an acceptable
21 building design was achieved for the proposed 130,000
22 square foot law center on the Cassell site.

23 The proposed arts center is not a 130,000
24 square foot project, but it is, in fact, a 260,000
25 square foot structure because of a 130,000 square

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1 foot, 550-car garage.

2 After almost a year of discussion, design
3 and negotiation, it is clearly evident that the
4 260,000 square foot structure cannot be accommodated
5 on the Cassell site without vociferous objections from
6 all neighborhoods.

7 The building design submitted for further
8 processing has changed little from that initially
9 presented to the neighbors last May. Ft. Gaines
10 consistently objected to the height of the proposed
11 building immediately adjacent to our homes.

12 We clearly identified the rotunda and the
13 rear half of the third floor of the academic wing as
14 being too close, too tall, and too imposing.

15 We do not believe that we have been
16 unreasonable in expecting accommodations for our
17 concerns, as the objectional building elements behind
18 our homes constituted about 15,000 square feet of the
19 proposed 260,000 square feet. That's only about six
20 percent of the building.

21 Until mid-January, AU had made only token
22 attempts at modifying the building design to assuage
23 our objections. Most of their efforts were expended
24 on increased grading and landscaping to shield our
25 homes from the building.

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1 But it was obvious that they considered
2 their building design sacrosanct. It was not under
3 John Fondersmith, of the Office of Planning, verbally
4 expressed agreement with the neighbors' objections to
5 building height that any significant attempt at
6 building redesign was made.

7 A few words from the Office of Planning
8 achieved something that the neighbors' months of
9 negotiation could not.

10 After OP's impetus, about 4,800 square
11 feet were eliminated from the objectionable third
12 floor. That's less than two percent of the 260,000
13 square feet.

14 The resultant building design is as is
15 currently presented in the campus plan and application
16 for further processing. This building design is still
17 objectionable; 11,000 square feet are still too close,
18 too tall, and too imposing.

19 AU has acknowledged their design is
20 objectionable by proffering compensation to the
21 neighbors. Their offers have been ludicrously
22 inadequate.

23 We thank Mr. Fondersmith in the Office of
24 Planning for getting the neighbors a two percent
25 building concession out of AU. However, the tone and

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1 content of OP's report to the Zoning Commission is
2 disappointing.

3 The OP appears to give great weight and
4 mention to AU's menial concessions and supports AU's
5 current design. The report makes very little of the
6 real objections still held by the neighbors, and
7 nothing identifying the building components are both
8 higher and closer to our homes than existing
9 structures on the Cassell site.

10 Further, the OP report suggests
11 conditions, but provides no means of dispute
12 resolution or enforcement. Lacking an appropriate
13 segue, I'm just going to switch topics and briefly
14 challenge the traffic site.

15 MR. ELLIOTT: I'm going to interrupt you a
16 second. Mr. Bilecky has submitted his traffic
17 statement in our book. I forgot which tab it was.
18 And we'll just skip that for the interest of time. Do
19 you have anything further on the arts center?

20 MR. BILECKY: The arts center should not
21 be granted further processing until the neighbors
22 approve a design.

23 MR. ELLIOTT: Thank you very much, Mr.
24 Bilecky. Next, Mr. Herzstein.

25 MR. HERZSTEIN: Madam Chairman and Members

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1 of the Commission, I have submitted, on behalf of the
2 several citizens' organizations, a comprehensive
3 statement on March 22nd, and a further reply to the
4 University's response to that statement which,
5 unfortunately, I was only able to get in yesterday.
6 We did the best we could.

7 It's -- as Mr. Elliott said, it's evident
8 that you have read that, and I won't try to go over
9 it. I will hope to keep my comments very brief. I
10 will not try to review the various concerns we have.

11 I would like to --

12 MR. ELLIOTT: Let me just mention those
13 are both under Tab 3 of our book.

14 CHAIRPERSON MITTEN: Thank you.

15 MR. HERZSTEIN: And my first statement on
16 March 22nd had five exhibits attached to it. Exhibit C
17 has the summary of the neighbors' concerns. All I
18 want to do on that is to highlight, as Mr. Harab,
19 Ambassador Harab, and others have done and will do,
20 the critical importance of the population cap.

21 We think that the -- we can -- we can all
22 try, as we will over the years, to contain the
23 objectionable impacts by building fences, by watching
24 particularly buildings, by watching lights and so on,
25 by worrying about traffic.

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1 We will never succeed if we don't contain
2 the population growth. That's the only -- that's the
3 bottom and fundamental cause of these various other
4 problems. And of course, we can try to deal with
5 symptoms, but we must pay attention to the root cause.

6 And from the point of view of the
7 community, the most fundamental of all the concerns we
8 have is the population cap. And as we indicate, we
9 believe that cap should cap the existing population
10 actually on the campus, and allow for roughly an eight
11 percent growth over that.

12 But even then, it's not -- as the
13 University has said, it just needs growth -- it just
14 needs flexibility for fluctuations in programs and not
15 for permanent growth.

16 There is a tendency for universities to
17 want to grow to cover their expenses. Some of them
18 behave like businesses. Well, we have more expenses;
19 let's -- let's sell more product, as it were.

20 When you have a -- number one, that's not
21 the mission of a university. It's not to -- it's not
22 to make money. It's to educate people.

23 And number two, when you are worried about
24 the university, in a residential context, not
25 overrunning its boundaries, obviously, you can't allow

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1 it just to come in and say, "We need more money; we
2 need to take in more students, and therefore, allow us
3 to grow."

4 I won't summarize the other concerns we
5 have. We did address in my statement, in the body of
6 the statement, some of the measures we think need to
7 be taken to straighten this plan out. But as you
8 indicated earlier, it's not necessary, I think, for me
9 to go into that at length now.

10 Let me just say, in summary, that the
11 basic -- basic challenge for the Zoning Commission, in
12 our view, in cases like this is to determine the level
13 of confidence that the Commission, that the D.C.
14 Government, and the neighbors can have in the -- in
15 the protection given by the zoning regulation.

16 The standard in the zoning regulation
17 appears very strong. A university is not allowed to
18 function in a residential community if it is -- unless
19 it can show that it is not likely to become
20 objectionable.

21 That's a very strong standard on its face.
22 A neighbor looking at that would say, "Oh, my
23 goodness, that's -- that's really good. That's really
24 going to protect us."

25 The problem comes in the actual

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1 administration of it. And there, as I say, the
2 challenge in each case, it seems to me, is for the
3 Commission to decide how much confidence its going to
4 insist on, how much it's going to insist on in order
5 to give a proper level of confidence.

6 In the early years of this university and
7 others, the problem is not very great. But as the
8 universities get bigger and begin to fill their
9 envelopes, and as the community gets more crowded,
10 obviously the risk of adverse impact is very high.

11 Experience in recent years has shown, as
12 you well know, that this law is not working very well
13 in other neighborhoods. I would challenge anyone to
14 tell me that the universities in Foggy Bottom and in
15 Georgetown have not had objectionable impacts over the
16 years, have not had adverse impacts on those
17 communities.

18 Our community is not, fortunately,
19 suffering as much. But we are suffering, as you will
20 hear from witnesses. And we see the handwriting on
21 the wall. We don't want to become another Foggy
22 Bottom. An unlimited growth and inadequate attention
23 to this basic standard of objectionable conditions is
24 the -- is the root cause of this.

25 Now, why is it that the -- that the law

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1 hasn't been working in some of those towns, in some of
2 those communities? I know the Office of Planning is
3 studying this, and you're working on new regulations.

4 And I'm certainly not a planning expert.
5 But as a lawyer looking at this, and having worked on
6 -- on the neighborhood relationship with the
7 University for about 15 years now through these two
8 separate proceedings, I have a few comments based on
9 experience.

10 The first problem is, I think, inadequate
11 attention to consulting and taking in the views of
12 neighbors before the initial plan is drawn up. I
13 think the habit of the universities, including this
14 one in this case, is to draw up the plan and then say,
15 "Okay, let's consult the neighbors."

16 I think if they behaved as the BZA
17 required AU to behave in 1988, when they sent the plan
18 back and said, "Consult with the neighbors equally
19 with the university, and draw up a plan that meets the
20 needs of both of them," I think there's a much better
21 chance of coming up with a proper plan. That's
22 problem number one.

23 Problem number two is I think the plans
24 that the University has come up with are vague. They
25 want to keep their options open. They -- they come up

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1 with --

2 CHAIRPERSON MITTEN: Mr. Herzstein, I can
3 sense a little bit of nervousness on the part of some
4 of your colleagues. I think if you're done addressing
5 specifically the merits of the case --

6 MR. HERZSTEIN: Okay.

7 MR. ELLIOTT: Well, let me ask you if you
8 are. We're okay with the time right now, Bob. If you
9 could shoot toward being done by 17 minutes, we'll be
10 good.

11 MR. HERZSTEIN: Okay. I'm just about
12 done. The -- the next problem is, as I said, the
13 problem of vagueness. Then, there's a problem of this
14 two-stage process. How much confidence should one
15 insist at the first stage, and how much should one
16 allow the University to say "Oh, we'll take care of
17 that in further processing"?

18 In the paper we filed yesterday,
19 responding to the University, we addressed a number of
20 situations where virtually every issue that we raised,
21 the University has brushed off with a comment that,
22 "We'll take care of that. We'll paper that over at
23 the -- now, and we'll look at it at the next stage."

24 A further problem that underlies the
25 difficulty of these campus plans is that the

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1 conditions imposed, or the conditions suggested, by
2 the universities, and sometimes the conditions
3 imposed, are too vague. So, there is no rule of law,
4 even after the campus plan and its conditions go into
5 place.

6 And then, of course, there's the problem
7 of enforcement, which the Office of Planning, itself,
8 has called attention to, and we certainly have called
9 attention to. We think there is a way out of that.

10 We have suggested that, in our filings
11 with you, we think that it's entirely within the scope
12 of the authority of the Commission to require the
13 University, as a way of addressing and heading off
14 objectionable conditions, to establish an arbitration
15 mechanism.

16 The Commission would not be imposing this
17 mechanism. The Commission would be saying, "Look,
18 experience has shown that you have problems between
19 hearings with us. You have problems getting along
20 with the neighbors. The neighbors feel there are
21 objectionable conditions. There is no way they can
22 get accountability."

23 So, we suggest to you that a way to get
24 approval from us is to set up a mechanism for taking
25 care of these problems. And we do urge you to give

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1 careful attention to this question of enforcement in
2 between hearings at the Zoning Commission.

3 MR. ELLIOTT: Thank you, Bob.

4 MR. HERZSTEIN: Thank you very much.

5 MR. ELLIOTT: Next, Priscilla Holmes, and
6 I would appreciate if the Commission would turn to Tab
7 8. She wants to show you the photographs that are
8 numbered at the end of her written statement. Would
9 you go ahead, Priscilla?

10 MS. HOLMES: Yes, Madam Chair. Thank you
11 very much --

12 CHAIRPERSON MITTEN: You need to speak
13 into the microphone.

14 MS. HOLMES: Okay. I'm Priscilla Holmes.
15 I live at 4710 Woodway Lane, Northwest. Our property
16 borders directly on AU for 450 feet, nothing in
17 between. Our property is high and overlooks the
18 campus, so we see a great deal of its western
19 perimeter.

20 These impacts also affect other neighbors,
21 Quebec Street, University Avenue, Rockwood Parkway,
22 and so on. But we want to emphasize that for all of
23 us, it's important that the University not be allowed
24 to develop the center of this campus by pushing
25 everything over to the peripheries of the -- of the

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1 neighbors that have no barrier between them, southern
2 and western neighbors.

3 Well, I want to go on and mention some of
4 the conditions in the 1989 agreement which I think
5 should be renewed, continued, and enforced.

6 Now, the screening and planting is of
7 basic importance. We face a tremendous number of big
8 buildings on our -- on the western side of the campus.

9 The screening has improved. They've planted some of
10 the things, but it remains deciduous, gaps in between,
11 not tall enough.

12 If you look at Picture 1, you'll see there
13 the view from our back yard.

14 COMMISSIONER HOLMAN: Did Mr. Elliott say
15 Tab 8?

16 MS. HOLMES: Yes. I think you know it's
17 under Exhibit 8, right?

18 CHAIRPERSON MITTEN: Yes, I think Mr.
19 Elliott told them.

20 MR. ELLIOTT: The numbers are in the
21 right-hand corner, the top, with the book straight up.

22 CHAIRPERSON MITTEN: We're amazingly
23 adaptable. We've got it.

24 MS. HOLMES: You've got it. Good.
25 Picture 2 is the same view at night where you see some

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1 of the lights. Picture 3 shows the view of the campus
2 that we get from our front porch at 4710.

3 If you look at the middle of that photo,
4 you'll see the famous AU logo, which we see from our
5 porch. When we were talking to the University and
6 landscape experts about the screening, they admitted
7 that it wasn't adequate. But they were rather vague
8 about what they would do about it.

9 So, we think there should be clear and
10 specific landscape planning to take care of these
11 existing conditions and to comply with the zoning
12 regulations.

13 Also, there should be a requirement of
14 maintenance. Western Road -- we have no map here, but
15 that road runs right along our property next to the
16 playing field. And it was supposed to be closed to
17 parking under the '89 agreement.

18 However -- I skipped one picture. Look at
19 Picture 4. You see some of the cars parked along that
20 road, completely in violation of the agreement -- of
21 the order of --

22 MR. ELLIOTT: That would be five --

23 MS. HOLMES: -- plan.

24 MR. ELLIOTT: -- and four is the AU logo.

25 MS. HOLMES: Well, there are two of the AU

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1 logo. Picture 5 -- is that what I said -- is the cars
2 parked along the road, which are -- which there are
3 not supposed to be any.

4 Also, on Picture 6, you see some more
5 cars. That was taken four weeks before, while this
6 proceeding was in progress.

7 This road, the western roadway, will be
8 abandoned under the new plan, which will be a great
9 improvement. I think that it should have a proposed
10 time frame there in the plan.

11 And meanwhile, I think the Office of
12 Planning and the University have agreed that both ends
13 of the road will be chained off. And all traffic and
14 parking will be limited only to necessary University
15 maintenance vehicles.

16 Lights, the lights at night, especially
17 from Watkins, shine directly on us. In Picture 7, you
18 can see the effect of the lights. With some of the
19 proposed buildings, they would be that much worse.

20 Noise, there is considerable noise a lot
21 of the time. Radio Center and University have very
22 noisy generators which vibrate our house. Cars play
23 their radios loud, wandering past on that road.

24 When the games are used -- when the games
25 are played on the field next to us, and even on the

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1 one by University Lane, we can hear them, especially
2 when they have their loud-speakers turned outward.

3 MR. ELLIOTT: Priscilla, if I could just
4 ask you to explain this one, final set of double
5 pictures, and then we'll move to Mr. Ruttenburg?

6 MS. HOLMES: Well, let me -- let me finish
7 up here. I'll skip that one. There are several other
8 items in here, which you can find in Exhibit -- in the
9 exhibit, which we feel, very strongly, should be
10 considered.

11 Building F is much, much, much too big. A
12 and B are not needed, and so on; and some of the items
13 which the University has not been enforcing. In
14 short, we want careful protection of our
15 neighborhood's rights to enjoy privacy and
16 tranquility.

17 MR. ELLIOTT: And that double set of
18 pictures, what is that, just in two words, if you can?

19 MS. HOLMES: This is the way the screening
20 looked before the improvements in 1989 from University
21 Avenue.

22 MR. ELLIOTT: Thank you very much. Next,
23 we're going to have Mr. Ruttenburg address the
24 Commission. He is the President of the AU Park
25 Citizens Association.

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1 MR. RUTTENBURG: Madam Chairman and
2 Members of the Commission, in the brief time that I
3 have to present this testimony, I would like to make
4 three recommendations for action by the Commission.

5 First, definition of the American
6 University Campus; it is fully within the authority of
7 this Commission to establish appropriate campus
8 boundaries. And the Commission should include the law
9 school and its population within those boundaries.

10 Second, not only should the Commission
11 include the law school in the campus boundaries, but
12 also it should limit the total AU population increase
13 to a modest percentage to allow for the "flexibility"
14 referred to be AU's witnesses in their testimony.

15 Third, should the Commission authorize a
16 significant increase in the AU Campus population, say
17 in excess of eight percent, as has been suggested,
18 such increase should be tied to the provision of
19 adequate housing and parking in connection with such
20 increases.

21 For example, one for one after a certain
22 percentage has been reached, as has been done in the
23 case of campus plans recently decided by the BZA.

24 The American University Campus extends
25 west to 46th and Massachusetts, two blocks from the

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1 law school. Not only is the law school extremely
2 close to the main campus; it has major relationships
3 to the main campus.

4 Law students use main campus facilities.
5 Many park on the main campus. The AU shuttle bus
6 travels from the law school to the main campus and
7 beyond.

8 Law students participate in main campus
9 activities, and have major impacts on residential
10 properties nearby, some of which are not more than 30
11 to 40 feet away, and on the community shopping
12 facilities as well.

13 The law school book store is not at the
14 law school, but is on the main campus. And financial
15 matters are handled for law school students on the
16 main campus.

17 AU has conveniently omitted any data with
18 regard to where the 1,500 law students, approximately,
19 reside, and has not included, in its traffic studies,
20 any data with regard to travel in the area by law
21 students.

22 It is though the law school does not
23 exist, but it does exist and is an integral part of
24 the University. There is no rationale reason why the
25 law school property should not be included as part of

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1 the campus, and the students included in a population
2 cap established pursuant to the campus plan.

3 Let me address a specific issue regarding
4 to the law school and the Office of Planning.

5 CHAIRPERSON MITTEN: Mr. Ruttenburg, I'm
6 just going to -- I'm going to stop you there because
7 early on, we talked about the fact that it really is
8 outside the jurisdiction of the Zoning Commission to
9 extend the campus to include the law school because
10 where it's located, it's being -- it's permitted by
11 right because it's in a commercial zone.

12 So, I've allowed you to go on to some
13 extent --

14 MR. RUTTENBURG: May I respectfully
15 disagree and I raise my point? I think the Commission
16 has the authority to determine campus boundaries. And
17 it does have the authority -- and I've searched all
18 the cases. I've looked at the law, and I've talked to
19 a lot of people who are experts in this field.

20 I'm not a zoning lawyer; I'm an attorney.
21 And this Zoning Commission, as distinguished from the
22 BZA, in my opinion, does have such authority if it
23 chooses to do so.

24 I'm not saying you're required to do so,
25 and I'm not saying that the University has no ability

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1 to acquire this building, which it did and has. But I
2 think the Zoning Commission does have such authority.

3

4 And I hope you would not assume it
5 doesn't, because I think that would be a mistake of
6 law. So, that's my view.

7 CHAIRPERSON MITTEN: Well, we disagree
8 about that.

9 MR. RUTTENBURG: Now, may I continue? I'd
10 like to.

11 CHAIRPERSON MITTEN: Well, I -- I would
12 like to focus on the campus plan that's before us, and
13 not dwell on the law school --

14 MR. RUTTENBURG: Well --

15 CHAIRPERSON MITTEN: -- and its inclusion.

16 MR. RUTTENBURG: -- the Office of Planning
17 -- and I'm jumping in my testimony because it's been
18 interrupted. But the Office of Planning made it very
19 clear to us during our discussions that the law school
20 has a major impact on the community and that something
21 should be done with it.

22 In fact, in our most recent submission,
23 the addendum to the main report says that somehow,
24 there should be a parking plan put into effect.

25 Now, if this Commission takes the view

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1 that heck, you can't even discuss the law school and
2 its parking, then I don't see how anybody can put a
3 parking plan into effect.

4 I think it would be a mistake. I think
5 the Zoning Commission does have such authority. And
6 I'm strongly urging that you consider that
7 possibility.

8 Our parking plan that we now have was the
9 result of the settlement of litigation, which American
10 University Park -- to which American University Park
11 was not a party. We have no enforcement power with
12 regard to that.

13 Moreover, that plan is very flawed. I
14 won't go into the details. But it expires in five
15 years. At the end of that, we don't have anything.

16 CHAIRPERSON MITTEN: How much more
17 testimony did you have about the law school?

18 MR. RUTTENBURG: Well, I have some about
19 -- no, I think that it's not too much about the law
20 school. It's more on housing and so forth.

21 CHAIRPERSON MITTEN: That would be great.
22 We would love to hear that.

23 MR. RUTTENBURG: All right. Incidentally,
24 before I finish on the law school issue -- I know I'm
25 trying your patience, but I have my one shot after a

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1 year's work, and I want -- I want to take it.

2 Our counsel has made a filing -- made a
3 filing on February 15th, and I refer to Part 4 of that
4 where he goes into detail about --

5 MR. ELLIOTT: And let me mention, that is
6 under Tab 1. We did brief this about nine pages. I
7 would urge you to at least read that again, Madam
8 Chair.

9 CHAIRPERSON MITTEN: And we will.

10 MR. ELLIOTT: Thank you.

11 CHAIRPERSON MITTEN: Thank you.

12 MR. RUTTENBURG: Now, with regard to --
13 and incidentally, I did update that. It was submitted
14 on February 15th, a 50-so page statement of our case,
15 and I updated it yesterday. It's 56 pages now. And
16 that's submitted as part of our case.

17 CHAIRPERSON MITTEN: Thank you.

18 MR. RUTTENBURG: With regard to the
19 population cap, this Commission should limit AU's
20 total population increase to a modest percentage to
21 allow for AU's requested "flexibility". That's their
22 word.

23 It is hard to understand the need for a
24 potential increase of 1,750 FTE students, and more
25 than that in bodies, in order to provide for

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1 enrollment fluctuations.

2 Should the Commission authorize a
3 significant increase in the AU Campus population, it
4 should be tied to the provision of adequate housing
5 and parking.

6 AU's request for a population cap could
7 consist of a number of additional undergraduates, who
8 raise special problems for the communities. AU's
9 testimony made it clear that it has no parking plan
10 for its on-campus student population.

11 Now under pressure, it has indicated it
12 will establish a plan, the details of which need to be
13 worked out. But as you know, they don't include the
14 law school, and you're not letting us talk about it.

15 And I won't go into the parking plan
16 that's in effect now. I already -- I already
17 mentioned that.

18 As to housing, AU claims there are only 24
19 student houses in Zone 16. AU conveniently neglected
20 to mention that there are an additional 900 students
21 in area apartments, and has omitted statistical data
22 with respect to student houses for the 1,400-plus law
23 students at 4801 Mass.

24 We are trying very hard to avoid the
25 community damage, which has occurred in Foggy Bottom

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1 and Burleith. The Commission has the opportunity to
2 predict -- to protect nearby residential areas from AU
3 encroachment.

4 AU points to the parking facilities which
5 would be provided by the construction, authorized by
6 its 2000 campus plan, if approved. These facilities
7 may never be built.

8 Over the last decade, AU built only 12,000
9 square feet of the construction authorized by its
10 campus plan. It concedes that it needs to obtain
11 funding for the structures proposed, except for the
12 three for which it is currently requesting further
13 processing.

14 And as Mr. Elliott mentioned, no more than
15 400,000 square feet were built in any event. No one
16 knows which -- which buildings will be built.
17 Therefore, we see a potential for authorization of
18 1,750 additional FTE students, no significant
19 additional housing, no parking plan, potentially few
20 additional on-campus parking facilities, and a grave
21 possibility of drastically increased housing and
22 neighborhood parking.

23 The proposed campus plan provides for
24 almost no additional dormitory space. AU would have
25 you believe that by adding 1,750 students with no

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1 additional campus housing, and potentially no
2 additional campus parking, would not result in a major
3 increase in student housing and parking in American
4 University Park, Spring Valley, and Spring Valley
5 Court.

6 That is a myth. As student housing
7 increases to a significant degree in our areas, it
8 will result in a destabilization of our communities.
9 That should not be allowed to happen. That's my
10 statement, Madam Chairman.

11 CHAIRPERSON MITTEN: Thank you.

12 MR. ELLIOTT: Before I turn to our final
13 witness, Paul Duke, just let me mention, Madam Chair,
14 that on the parking issue, which Mr. Ruttenburg just
15 mentioned, as you know, AU did come forward with the
16 exact wording of the condition order from Mount
17 Vernon. It's only three words different.

18 And in my opening statement that I
19 submitted in writing, Tab 1, we made a number of
20 suggestions as to how to make that work at AU.

21 And I think particularly the biggest
22 problem AU has in making that work, and getting the
23 cars off the street, is identification of the cars.
24 That's what really needs to be corrected.

25 The other thing we point out in the filing

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1 of March 21, page three, is you need to work with a
2 geographic area on this parking thing. Because kids
3 are smart, and they walk, and they jog.

4 And if you have a particular geographic
5 area, they can go one more block. So, this has to be
6 a dynamic process between the University and the
7 neighbors to have it cover the right area.

8 If they go far enough, maybe who cares?
9 But if they are two blocks -- if the area patrols two
10 blocks and they're going one more block, you've got
11 the problem just pushed out to three blocks.

12 So, I would urge you on the parking item,
13 where there has been progress, to look at our
14 suggestions to close the loop there.

15 Finally, Paul Duke, President of Spring
16 Valley Court Association.

17 MR. DUKE: I'm not the president.

18 MR. ELLIOTT: I correct myself. Paul Duke
19 is --

20 MR. DUKE: I see our time is practically
21 running out, and I'm going to try to be blessedly
22 brief in keeping with what Elizabeth Taylor promised
23 her sixth husband, "Don't worry; I won't keep you
24 long."

25 (Laughter.)

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1 You've now heard most of the major
2 arguments, and I think they boil down to one,
3 overriding fear, that our community will be overrun
4 and swallowed up by an ambitious and powerful
5 institution.

6 Two all-important things are at stake
7 here. The first is the quality of life in the
8 affected neighborhoods. You've heard about the
9 parking problem. That's a growing problem.

10 And you, Mr. Hood -- the other night at
11 one of the hearings, you hit the nail right on the
12 head when you said they didn't have any realistic
13 anti-parking problem. In fact, in my view, you might
14 say the main problem is that AU will not even
15 acknowledge that there is a serious problem. And that
16 includes, as Mr. Ruttenburg just said -- the law
17 school is part of the problem too.

18 A related concern is the congestion caused
19 by AU's expansionist moves, especially around the
20 Spring Valley Shopping Center, with some of the
21 commercial establishments catering more and more to AU
22 students.

23 Nothing wrong with that in theory; but we
24 don't want our lovely little shopping area to become
25 primarily a mecca for students.

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1 I was part of small group some years ago
2 that worked hard to achieve to historical status for
3 the shopping center, since it's one of the country's
4 original shopping centers.

5 We want it to remain what it has always
6 been, a place to serve the needs of the local
7 residents. Hence, the necessity, the absolute
8 necessity, of a real, meaningful, hard and fast
9 population cap, certainly much less than the one which
10 has been proposed.

11 This leads me to my second point of what's
12 at stake, and that is the preservation of the City's
13 treasured, old neighborhoods. As you well know, this
14 is something that Mayor Williams has talked quite a
15 bit about; not just about the preservation of the
16 neighborhoods, as such, but the preservation of their
17 flavor, and their ambiance, and their basic character.

18 Now, let me say, as others have said,
19 we're not here as enemies of progress or AU bashers.
20 Most of us really like having an institution -- an
21 institution of higher learning as part of our
22 community.

23 What we don't like is for AU to feel it
24 can run rough-shod over the community's wishes. All
25 too often, AU operates in a style reminiscent of a

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1 famous Defense Secretary, who once said, "What's good
2 for General Motors is good for the country."

3 In this case, what's good for AU is not
4 necessarily good for the City, or the City's
5 residents.

6 We've been hearing a great deal lately
7 about a new era of bipartisanship here in Washington.

8 It would be nice to think that that cooperative
9 spirit would encourage AU to be more conciliatory and
10 less unbending in its negotiations with the neighbors,
11 so we could all live in peace and harmony.

12 Madam Chairwoman, in your deliberations, I
13 would just urge your and your fellow Commissioners to
14 weigh the words of the ancient Roman Statesman,
15 Cicero, when he said, "The good of the people is the
16 highest law there is." Thank you. I give you back
17 two seconds.

18 (Applause.)

19 CHAIRPERSON MITTEN: Thank you very much.
20 Well done, Mr. Elliott. You are to be congratulated.

21 (Laughter.)

22 CHAIRPERSON MITTEN: Now, maybe you can
23 help facilitate if we need to bring people up to
24 answer questions. You'll have to bring the right
25 people forward. Questions from the Commissioners for

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1 these folks? Go ahead.

2 VICE CHAIRPERSON HOOD: I just have a
3 couple of statements. I'm hearing the testimony, and
4 I guess I'm kind of taken back because I was under the
5 assumption that there have been a lot of people at the
6 table for a while, dealing with the campus plan.

7 Would I be correct -- and I can ask Ms.
8 Holmes and Mr. Herzstein -- if not -- if not, then who
9 was at the table? Who were they working -- dealing
10 with? Because it seems like -- I guess, unless I'm
11 understanding incorrectly, it seems as though I'm
12 hearing that you all weren't at the table in
13 negotiating this -- this plan.

14 MS. HOLMES: Are you asking me?

15 VICE CHAIRPERSON HOOD: Either one, Ms.
16 Holmes -- let me hear from Ms. Holmes, if you don't
17 mind.

18 MS. HOLMES: I think as we --

19 VICE CHAIRPERSON HOOD: Turn your mic --
20 your microphone --

21 MS. HOLMES: The University had its plan
22 ready before they consulted us at all, and presented
23 us with it.

24 VICE CHAIRPERSON HOOD: So, in other
25 words, they brought you something. They didn't ask

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1 you for your input?

2 MS. HOLMES: Yes.

3 VICE CHAIRPERSON HOOD: Okay.

4 MR. HERZSTEIN: Yeah, we felt we were
5 digging our way out of a hole, rather than working
6 collaboratively with them on devising a plan that
7 would work for both of us.

8 VICE CHAIRPERSON HOOD: Okay. Now, as far
9 as being cooperative, Mr. Herzstein, you read earlier
10 where when you have different functions at your house,
11 you just make a phone call to the dean, and he usually
12 accommodates you. Is that -- that's true?

13 MR. HERZSTEIN: Yes, the 1989 campus plan
14 has a very detailed exhibit in it called "Use of the
15 Athletic Fields," and it sets rules for the use of the
16 fields so that they won't be intrusive on the
17 neighbors.

18 And one paragraph in there says that if a
19 neighbor is having a function and let's the University
20 know in advance, the University will try and avoid a
21 conflicting function that's going to create noise.

22 Interestingly, in the proposed continuing
23 conditions the counsel for the University has
24 presented to you, they picked up everything in that
25 exhibit except that paragraph.

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1 We don't know why. We haven't had the
2 chance to talk with them yet. In one of the latest
3 pleadings, Ms. Dwyer said they're ready to continue
4 everything from the '89 plan.

5 But we have to -- we feel we have to weed
6 through it and find each detail that may have been
7 left out.

8 VICE CHAIRPERSON HOOD: Okay.

9 MR. HERZSTEIN: Anyway, that's -- that's
10 the situation there. Now, they are also supposed to
11 notify us of special events that create noise. And
12 just last summer, there was an event, a very big event
13 where the speakers -- the loud speakers were out
14 there, and were turned right toward our house.

15 There was no advance notice, and the
16 speakers were being used incorrectly. Very nicely,
17 David Taylor responded quickly and apologized for
18 that, but --

19 VICE CHAIRPERSON HOOD: Mr. Herzstein, I'm
20 going to cut you off --

21 MR. HERZSTEIN: Okay.

22 VICE CHAIRPERSON HOOD: -- because I guess
23 I have a time limit too. So, I want to make sure --

24 MR. HERZSTEIN: I'm sorry.

25 VICE CHAIRPERSON HOOD: I know I don't,

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1 but I've got the logistics of your --

2 MR. HERZSTEIN: You can sense that we have
3 a lot of concerns and --

4 VICE CHAIRPERSON HOOD: Yeah, I have the
5 list of your comments. The other question is, is this
6 typical, the picture? I'm not exactly sure, Ms.
7 Holmes, in your presentation -- I think it was five
8 and -- Picture 5. Is that typical of what happens
9 normally? Does this go on all the time, where you
10 park where it says "no parking"?

11 MS. HOLMES: Yes, yes, where the cars are,
12 yes.

13 VICE CHAIRPERSON HOOD: And I would say
14 this, I believe Mr. Reinberg --

15 MR. RUTTENBURG: Ruttenburg.

16 VICE CHAIRPERSON HOOD: Ruttenburg, I'm
17 sorry, excuse me. I will say that I found your
18 testimony interesting. While I may be in difference
19 with my colleagues, I would have like to have heard a
20 little more. But since --

21 MR. RUTTENBURG: So would I, Mr. Hood.

22 (Laughter.)

23 VICE CHAIRPERSON HOOD: Right. But I'll
24 wait and deal with that on the back end. Right now, I
25 don't have any other questions, Madam Chair. Thank

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1 you.

2 CHAIRPERSON MITTEN: Go ahead.

3 COMMISSIONER HOLMAN: I guess this is to
4 the panel. I don't know exactly who to address this
5 to. I've heard testimony that the University should
6 have a firm cap that's much lower than the cap that
7 they propose.

8 What do you perceive to be that magic
9 number, and how do you -- how would you support that
10 number, if you have one?

11 MR. ELLIOTT: While Bob is reaching for
12 something, let me suggest what we put in our papers,
13 which is they have said they don't plan growth, but
14 they have good years. When they want to accept more
15 than average students, they have temporary
16 fluctuations.

17 Then, they get back to about where they
18 are. In that line, I think, in principle, we would
19 like to see them -- we would like to see the
20 population cap keyed to the current level, but with
21 room for some fluctuations and with them getting back
22 to where they are when they decide to go up
23 temporarily.

24 COMMISSIONER HOLMAN: And by "the current
25 level," you don't mean the current number in the

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1 population cap of '89, but the current number of
2 students actually on the campus?

3 MR. ELLIOTT: That's correct; they've
4 given you those numbers. And that's where the 25
5 percent comes. If you were to give them the cap they
6 want, that's 25 percent higher than where they are
7 today.

8 COMMISSIONER HOLMAN: So, let me
9 understand your answer; because what we're talking
10 about is a cap with flexibility, so what you're saying
11 is the basic, current enrollment should be the cap.
12 And then, how would you accommodate the flexibility?
13 I'm not trying to put words in your mouth.

14 MR. ELLIOTT: You could allow, say, eight
15 percent above for periods when the accept more
16 students. The 1989 cap was eight percent above
17 current population levels at that time. I think eight
18 percent -- I mean, that's something we cross examined
19 about.

20 I think eight percent is what we would
21 suggest temporarily because that's what they said they
22 need. They don't need 25 percent. It becomes
23 meaningless if you go to 25 percent.

24 COMMISSIONER HOLMAN: Thanks.

25 COMMISSIONER PARSONS: Can I follow up on

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1 that? Mr. Herzstein, I see in here that you called
2 for a cap of 10,175 students, and 2,193 employees. Is
3 that correct? That's your proposal?

4 MR. HERZSTEIN: That's the number that was
5 in my papers, yes, sir.

6 COMMISSIONER PARSONS: At Exhibit C?

7 MR. HERZSTEIN: That's correct.

8 COMMISSIONER PARSONS: And that's about
9 eight to ten percent, according to your calculations?

10 MR. HERZSTEIN: That's correct.

11 CHAIRPERSON MITTEN: I had a question that
12 Mr. Franklin wanted us to ask, which is -- and maybe
13 this -- Mr. Bilecky would be the best person to answer
14 this, if he can. I don't know how long he has lived
15 there.

16 But Mr. Franklin was curious as to the
17 nature of the Cassell Building when it was in
18 operation, particularly the use of the service road at
19 the back of the facility. Is that something that
20 you're familiar with?

21 MR. BILECKY: I think I've been in my home
22 seven years. And when I moved there, the Cassell
23 Building was in operation. I don't really have a
24 distinct recollection of disruption from the service
25 road.

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1 I do have very bad recollections of
2 parking on our streets when the building was in use.
3 Once they moved the law students out of there --

4 CHAIRPERSON MITTEN: And the building was
5 in use as a sports facility; is that --

6 MR. BILECKY: Law -- I believe they were
7 using it as law. There's a couple other residents
8 here that could answer these questions a lot more
9 clearly than I.

10 CHAIRPERSON MITTEN: Well, I'll put it to
11 them too when --

12 MR. BILECKY: Okay.

13 CHAIRPERSON MITTEN: -- when they come up.
14 So, thank -- thank you for addressing that. I would
15 like to ask a question of Ms. Holmes about this
16 Photograph No. 7.

17 What's the nature of the -- of the bright
18 lights? I mean, that's sort of atypical of just
19 regular building light. Can you --

20 MS. HOLMES: The lights --

21 CHAIRPERSON MITTEN: I need you to speak
22 into the microphone.

23 MS. HOLMES: Do you mean the kind of light
24 that's generating that effect?

25 CHAIRPERSON MITTEN: Well, a building that

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1 just has lights on, on the inside, typically would not
2 give off, you know, these sort of individual bright
3 lights. Can you describe to me why --

4 MS. HOLMES: Looking out, say, my kitchen
5 window, there are several big windows facing us from
6 Watkins. And when they aren't shielded, these lights
7 are very bright. They come right through the dark
8 night at us.

9 Now, exactly what you mean by the glow
10 effect, that may be the photography. Is it? Let me
11 ask him.

12 MR. HERZSTEIN: It's hard to photograph it
13 exactly. I think some of that is a glow from the
14 camera.

15 CHAIRPERSON MITTEN: Okay, so there's not
16 lights that are being sort of aimed out from the
17 building?

18 MR. HERZSTEIN: No. What it is, is large
19 -- very large, square windows covering the whole side
20 of the building, a sort of 1950's picture-window
21 building with fluorescent lights, bright fluorescent
22 lights, in each of the rooms, because they're studio
23 rooms. Students come in there and do sculpting and so
24 forth.

25 CHAIRPERSON MITTEN: Okay.

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1 MR. HERZSTEIN: They don't have any
2 effective screens on them. And so, what you see
3 basically is a -- I've compared it once before to a
4 Mondrian painting where you get big squares looking at
5 you.

6 CHAIRPERSON MITTEN: Okay. So, is the
7 offensive nature of the light when you're -- when
8 you're outside and you can see that there's a building
9 over there, or is this somehow actually shining into
10 your dwelling?

11 MS. HOLMES: It shines into our dwelling
12 also. It's true of both outside and inside on that
13 side of the building, it's got the dining room; it's
14 got the kitchen; it has other rooms; a guest room
15 upstairs. It's very difficult to enjoy your view at
16 all when there are bright lights.

17 And the windows happen to be slanted, so
18 they go right toward our house.

19 CHAIRPERSON MITTEN: Okay, I think I
20 understand.

21 MR. HERZSTEIN: I could -- I could just
22 mention that the 1989 plan has explicit commitment by
23 the University to shield those windows.

24 CHAIRPERSON MITTEN: And I think I
25 remember the discussion with Mr. Abud about the

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1 trouble that they've had trying to accommodate that
2 requirement.

3 MR. HERZSTEIN: Right.

4 CHAIRPERSON MITTEN: Mr. Herzstein, in
5 your statement that was filed previously, and that you
6 drew on tonight, one of the comments that you made in
7 there was the fact that the AU parking fees that they
8 charge now are high, and that that is somehow
9 encouraging people to park in the community.

10 Well, we heard testimony from the
11 University that their -- what they charge is actually
12 half of what would be a market rate.

13 And Mr. Laden, from the Department of
14 Public Works had suggested that raising the fees
15 higher would be a way of encouraging people to take
16 public transportation and so on.

17 Could you reconcile your position with
18 what we've heard?

19 MR. HERZSTEIN: Well, I think there's
20 probably an economist's or a planner's dilemma here.
21 From the macro point of view, I guess having very high
22 fees encourages more people to take other
23 transportation.

24 But where you're in the specific
25 neighborhood near one of those parking lots, and the

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1 alternative for an individual parker who has decided
2 not to take the public transportation is to either pay
3 the high fee or park in your street.

4 Then, the high fee operates as an
5 incentive for them to park in the street.

6 CHAIRPERSON MITTEN: When you say that
7 it's "high," it's high relative to what? Because the
8 market rate, if they were to park in some kind of
9 private arrangement -- at least the testimony has been
10 that it would be approximately twice what the
11 University charges.

12 So, when you say it's "high" --

13 MR. HERZSTEIN: Oh, I just mean -- I think
14 -- number one, it's higher than what it was, and what
15 it was supposed to be in the 1989 plan; not by a great
16 deal, I think. But it has gone up some.

17 Number two, it's simply high in the view
18 of the student. These are students who are -- many of
19 them are trying to get by on a limited income. And
20 it's just much cheaper for them to park in the street
21 than to park in the lot.

22 CHAIRPERSON MITTEN: So, it's high is
23 relative to free?

24 MR. HERZSTEIN: Yeah, exactly.

25 (Laughter.)

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1 CHAIRPERSON MITTEN: Okay, I'll agree with
2 that.

3 MR. HERZSTEIN: But that's the reality
4 we're dealing with.

5 CHAIRPERSON MITTEN: Thank you. Any other
6 questions from the Commissioners?

7 COMMISSIONER PARSONS: No.

8 CHAIRPERSON MITTEN: Ms. Dwyer, did you
9 have some cross examination?

10 MS. DWYER: I will try and keep this
11 brief. The first set of questions is for Priscilla
12 Holmes. And I just -- in looking at these
13 photographs, I just wanted to ask you what kind of
14 lens was used to take the photos from your yard,
15 because the view looks foreshortened?

16 And I wondered if you could state, for the
17 record, what kind of lens.

18 MS. HOLMES: The one from the backyard,
19 number --

20 MS. DWYER: Number one?

21 MS. HOLMES: Let me refer to my
22 photographer. Did you take this picture?

23 MR. HERZSTEIN: Yes. That's a normal
24 lens; I would say roughly a 50 millimeter. It's the
25 equivalent of a 50 millimeter lens on a 35 millimeter

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1 camera, which is the normal lens you use for an
2 average photograph; the same with number two.

3 And number three is probably like a 75
4 millimeter lens. In order to get rid of all of that
5 clutter of branches in front, that's slightly, but not
6 significantly, longer focal length than a normal
7 camera.

8 And number four, the same way; that is a
9 roughly -- the equivalent, if you were using a 35
10 millimeter camera, of a --

11 MS. DWYER: But were you using a 35
12 millimeter at this point, or a 75 millimeter?

13 MR. HERZSTEIN: No, this was a digital
14 camera, but that's -- that's the equivalent.

15 MS. DWYER: Okay, so you used three
16 different kinds of cameras to take these photos?

17 MR. HERZSTEIN: No, I think they're all
18 taken with one kind of camera.

19 MS. DWYER: Well, different kinds of
20 lenses?

21 MR. HERZSTEIN: Well, different focal
22 lengths. The basic point is that everyone who has
23 come out and stood on our front porch, including your
24 planners, has said, "Oh, yes, I can see the need for
25 more screening there."

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1 There is effective screening -- if you
2 look to the left of picture number three, you see a
3 couple of tall pine trees. One of those is on our
4 property, but a couple of them are on the border of
5 the University property. And they do a nice job of
6 screening those buildings.

7 But they aren't in the place -- they
8 aren't going all across. It wouldn't be a difficult
9 matter to put a few more of those in. It would take
10 some years for them to grow, but it would just not be
11 a difficult job.

12 And it also wouldn't be difficult to take
13 down the logo until the trees have grown up.

14 MS. DWYER: Have you suggested a
15 landscaping condition for the University for this
16 area? Have you proposed to them --

17 MR. HERZSTEIN: No. I guess I -- if you
18 want me to hire a landscaper and come up with a plan,
19 I can do that. Ten years ago, EDA did a very nice job
20 of working with us and the University. And they came
21 out, and they looked at things, and they said, "Let's
22 put these trees here and those trees there."

23 And a lot of the problem is taken care.
24 The problem now is holes, which haven't been taken
25 care of.

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1 MS. DWYER: Mr. Herzstein, I'm looking at
2 the two photographs, Photographs 3 and 4, and looking,
3 for example, at the AU logo. In one photo, it looks
4 significantly closer to your property than in the
5 other.

6 MR. HERZSTEIN: Well, we --

7 MS. DWYER: At what locations were these
8 photos taken?

9 MR. HERZSTEIN: Oh, the second one, as is
10 shown on there, is from University Avenue. That's
11 from -- that's not from our house. That was designed
12 to show -- give a better picture of the logo, and also
13 to support the testimony you'll be hearing from
14 University Avenue people.

15 MS. DWYER: All right. So, Photograph 3
16 is taken from your property?

17 MR. HERZSTEIN: That's right.

18 MS. DWYER: That's your view?

19 MR. HERZSTEIN: That's right.

20 MS. DWYER: And does that accurately
21 reflect that your property is 400 feet from the
22 nearest building on campus?

23 MR. HERZSTEIN: I can't give you the --
24 the foot numbers. The problem -- this shows you what
25 you see. And actually, you can talk about telephoto

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1 lenses and so on. When you go out there with your
2 eye, it looks at something that catches the eye.

3 It doesn't sort of take in the whole
4 scene, as though one were looking at a photograph.
5 And that logo, the smokestack, the big square
6 building, those are things that stand out.

7 Especially the logo catches your eye
8 because it's not consistent with anything else in the
9 -- in the neighborhood.

10 MS. DWYER: And the smokestack and the big
11 square building were on the campus in '89; is that
12 correct?

13 MR. HERZSTEIN: Yes, that's right.

14 MS. DWYER: All right. One other
15 question: on the photograph with the lights, the
16 evening lights -- and maybe this is Mr. Holmes'
17 testimony.

18 The lights that are shown in that
19 photograph are not shining on your property, but
20 rather they're shining in the distance. And your
21 point is that you can see them if you look out your
22 window?

23 MS. HOLMES: Yes, on the --

24 CHAIRPERSON MITTEN: Could you pull the
25 mic over so that you can speak into it?

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1 MS. HOLMES: Yes. Yes, you can see them
2 either from the outside or through the windows on that
3 side of our house. They're large, very large, windows
4 and the lights are bright.

5 MS. DWYER: Is this building also
6 approximately 400 feet from your property?

7 MS. HOLMES: Well, it depends on how you
8 measure the property. I noticed your lines, for
9 example, ran from Watkins to our building. And of
10 course, if you're in the yard, you might be in the
11 yard and you might be closer than that. I don't know
12 the exact feet.

13 MS. DWYER: Do you know what the depth of
14 your rear yard is? Is it 25 feet, 50 feet?

15 MS. HOLMES: The depth of our rear yard?

16 MS. DWYER: You're saying if you're in the
17 yard, you might be closer than the house. And I'm
18 just trying --

19 MS. HOLMES: Well, the house -- the yard
20 goes right up to the line with the -- however wide the
21 field is, the playing field.

22 MR. HERZSTEIN: Her yard, at that point,
23 if you measured from the house to the boundary at that
24 point, it would probably be about 150 feet.

25 MS. DWYER: All right.

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1 MR. HERZSTEIN: And the other thing about
2 those lights is, again, that they're not consistent
3 with anything else in the neighborhood. If there were
4 a house over there with its lights on, and there are
5 other houses around it, then you see a residential
6 view. But that's not what you see here.

7 MS. DWYER: Right. But isn't it fair to
8 say that when you have property that's close to a
9 university campus, what you're going to see is
10 somewhat different than what a residential
11 neighborhood would be?

12 MS. HOLMES: Not if the windows are
13 shielded, as they were supposed to be in our
14 agreement.

15 MS. DWYER: Have you proposed a way of
16 shielding these windows or a condition that would
17 allow shielding so that it does not present a problem
18 for you?

19 MS. HOLMES: I am not an engineer, but we
20 did have an engineer working with us. And he may have
21 worked with the University. The University came up
22 with its own plan. It had a couple of different plans
23 to shield the windows. I would think they should just
24 pull the shades, but it doesn't seem to be that
25 simple.

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1 MS. DWYER: Yes, I think my understanding
2 is that the individuals who work in the building don't
3 often remember to pull the shades. So, they went to
4 an electronic system, and that occasionally
5 malfunctions, as I understand it.

6 MS. HOLMES: Yes, I think they've had
7 different problems. The students tell me, no, that's
8 used by artists, that part of the building, and they
9 don't need the lights. But they're on anyhow, so it's
10 very hard to say.

11 MS. DWYER: All right. Mr. Herzstein, I
12 have a couple of questions for you.

13 MR. HERZSTEIN: And I have a footnote on
14 that one. Trying to be practical, if there were
15 really dense landscape screening there, maybe that
16 would take care of it. And the University could leave
17 -- could not worry about the shades.

18 But until that landscaping is in, it's --
19 it seems, to me, it's their responsibility to keep --
20 either keep the lights off or have shades drawn.

21 There have been many nights when we call
22 up and the police, who are always very courteous, but
23 they don't seem to remember the previous occasion,
24 they say, "Okay, I'll go over there and check it."

25 And they call us back and they say, "Well,

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1 there wasn't anyone in there," but they left the
2 lights on. It's just a matter of someone being a
3 little bit responsible -- someone taking
4 responsibility for this problem.

5 MS. DWYER: All right. A couple of other
6 questions for you; Mr. Herzstein back in approximately
7 February of 2000, when the University had formed this
8 working group, which I guess is about 14 months ago,
9 you were one of the members of the working group that
10 met with the University on the campus plan. Is that
11 correct?

12 MR. HERZSTEIN: That's right.

13 MS. DWYER: And at that time, did the
14 University provide you with a map showing all proposed
15 buildings, as well as the chart listing their sizes
16 and uses?

17 MR. HERZSTEIN: They did, I believe, at
18 the second meeting. The first meeting, where it was
19 sort of an organizational meeting where they talked
20 about procedures and some guiding principles, and at
21 that meeting, I said, "I hope that we're going to
22 proceed the way we did in 1988, not the way we did in
23 1987."

24 Because in '88 is when they had the
25 successful effort that took the neighbors in early. I

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1 was told, "Yes, that's the way we're going to
2 proceed."

3 But then, the next week, or whenever the
4 next meeting was, a map was handed out, which is
5 essentially the same map that's now in the plan.

6 MS. DWYER: And that was approximately
7 February of 2000?

8 MR. HERZSTEIN: I believe so.

9 MS. DWYER: And since that period of time,
10 have you had a chance to look at that list of
11 buildings and to propose to the University changes to
12 the buildings or conditions on those buildings?

13 MR. HERZSTEIN: In most of the
14 objectionable situations, we didn't see how the
15 problem could be solved with conditions. We did
16 discuss our problems with the buildings.

17 We suggested -- we said that we didn't
18 think certain buildings ought to be built. There were
19 a number of occasions when we went around individual
20 buildings or all the buildings and said what we
21 recommended with respect to different ones.

22 MS. DWYER: But back in '89, when you met
23 with the University and went through a similar list of
24 buildings, you were able to then support the plan on
25 the basis of conditions or parameters you put on those

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1 buildings. Is that correct?

2 MR. HERZSTEIN: Well, yes, but there, the
3 actual placement of the buildings and which buildings
4 were built and which weren't was decided after an
5 extensive discussion with the neighbors about what
6 their concerns were.

7 There was basically a start-from-scratch
8 approach where Joe Brown, the -- who is now the head
9 of EDA, and his people talked to the neighbors and
10 said, "What are your concerns?"

11 They talked with the University, and then
12 they started planning in order to meet the concerns of
13 both parties. And we -- it still had some problems.
14 And the negotiations went on for months. But they
15 were all in a very -- for the most part, very
16 constructive fashion.

17 They were led by -- from -- on the
18 University side, by your then-partner Wayne Quinn.
19 And Mr. Brown was the principal planner. And we were
20 -- the University ended up dropping several of the
21 buildings, as I recall it, which they felt there
22 wasn't an immediate need for, and which were just
23 sort of place-markers, including a large
24 administration building west of where the arts center
25 is now planned, and west of where the law school was

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1 then planned, at 45th and Massachusetts.

2 MS. DWYER: Mr. Herzstein, if I could ask
3 you to be more direct in your answers --

4 MR. HERZSTEIN: Okay, I thought I was --

5 MS. DWYER: -- or we're going to run out
6 of time.

7 MR. HERZSTEIN: -- being direct. Okay.

8 MS. DWYER: When the University came to
9 you in January 2000 and said, "We're getting ready to
10 do our campus plan, and what we've done is look at the
11 '89 plan, the -- approximately the same building
12 locations, and proposed a series of buildings that,
13 when you compare the '89 and the 2000 plans, the
14 building locations are similar."

15 Now, perhaps the buildings aren't
16 identical, but the locations are similar. Is it your
17 testimony that when the University did that, and that
18 over the last 14 months, you have had no opportunity
19 to sit down and to express your concerns or suggest
20 conditions, or suggest that maybe a building be
21 reduced in size --

22 MR. HERZSTEIN: No.

23 MS. DWYER: -- or eliminated; that the
24 process just did not allow you, in these weekly or
25 biweekly meetings, to have any input?

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1 MR. HERZSTEIN: To be very direct, the
2 answer to your question is no, that's not my
3 testimony.

4 MS. DWYER: Then why, over the last 14
5 months, have you not proposed to the University
6 changes or conditions on these buildings that would
7 make it more palatable to you and your organization?

8 MR. HERZSTEIN: We have tried to do so. I
9 think you could ask that question of various other
10 neighbors. A number of neighbors sat through it. I
11 think most of them would feel that we have made our
12 concerns very clear with respect to every building
13 where we have a concern.

14 MS. DWYER: Have any of those concerns
15 been filed as conditions or recommendations in the
16 materials you have filed in the record? I thought
17 your filing said that you did not have conditions to
18 offer at this time.

19 MR. HERZSTEIN: Well, we made our views --
20 that's a separate question, I think you're asking. We
21 made our views very clear to the University. They did
22 not show up in the plan, as filed, or the conditions
23 that you have presented, except sometimes in a very
24 general way where you say, "With respect to Building
25 A, we'll have ample buffering, or we'll put the air

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1 conditioner as far away as possible to limit the noise
2 as much as possible."

3 MS. DWYER: Well, then, let's look at
4 Building A. What would you suggest for Building A?
5 What are the conditions that you believe would address
6 your concerns for Building A?

7 MR. HERZSTEIN: Well, as you saw in my
8 papers of the last few days, we feel Building A --
9 it's just -- we don't see a way to build Building A
10 without objectionable conditions.

11 MS. DWYER: Even though this is a location
12 that was in the '89 plan, you don't think any building
13 at this location could possibly be approved?

14 MR. HERZSTEIN: That's correct.

15 MS. DWYER: All right, as to Building B --

16 MR. HERZSTEIN: Not possibly be approved?
17 No. I can't tell you what will be approved. We have
18 deep concerns that a building at Building A, when it
19 comes up for specific -- for further processing, that
20 you won't be able to assure that there will be --

21 MS. DWYER: Excuse me, the University
22 won't or the Commission won't?

23 MR. HERZSTEIN: That the University won't
24 be able to establish that there will not be a serious
25 mechanical noise problem or a serious light and view

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1 problem --

2 MS. DWYER: And you don't -- do you think
3 --

4 MR. HERZSTEIN: -- for the neighbors next
5 to that building. Now, I don't want to get -- I'm not
6 an expert, and I can't get into the details of that.
7 But what I'm saying is that we didn't see any way we
8 could suggest conditions that would make that building
9 palatable.

10 MS. DWYER: Then what happens --

11 MR. HERZSTEIN: But we do see where can
12 make suggested conditions. We will try to do so. We
13 have not had time to go through your conditions, and
14 compare them with the '89 plan and agreements, and
15 compare them with the current problems, and come up
16 with a definitive list of our own conditions.

17 We can try to do that sometime. And if
18 that's the direction the Commission goes in, of
19 course, we will -- we will do our best to submit
20 proposed conditions.

21 I'm telling you that one condition, with
22 respect to Building A, would be that it not be built.

23 MS. DWYER: Then my question is, what has
24 changed since 1989 to today, to reverse your position
25 of supporting a building at this location?

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1 MR. HERZSTEIN: Well, I think that we were
2 deeply concerned about that building in '89, very
3 deeply. There was about two or three pages of
4 conditions put in at that time.

5 The reason we accepted it there, frankly,
6 is that it was a bargaining -- it was a bargain we had
7 to make in order to get the building at 45th and
8 Massachusetts Avenue dropped, in order to get Building
9 A, which was much worse as initially proposed -- it
10 was initially going to be a performing arts center,
11 with both the performing arts and the visual arts in
12 it.

13 It was going to be much larger in the 1987
14 plan. And as part of this exercise with Joe Brown and
15 his team, when we got the law school pared down, we
16 got the 45th and Massachusetts Avenue site dropped.
17 And then, with respect to Building A --

18 CHAIRPERSON MITTEN: I think I'd really
19 like us to move along a little bit more quickly, if we
20 could. And I don't know, Ms. Dwyer, if you were
21 planning on going through each building and asking
22 what conditions he was interested in.

23 Because I think the answer is they haven't
24 -- they haven't gotten to that.

25 MR. HERZSTEIN: The short answer to that

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1 is that we were very unhappy about it then, and didn't
2 think it could be done. But as part of the overall
3 bargain, we allowed it to go in.

4 MS. DWYER: All right. Well, I was
5 planning on walking through all the buildings, because
6 I think by the fourth hearing, the applicant and the
7 Commission has a right to hear what the specific
8 issues are for each of these buildings, rather than
9 general statements that they're not acceptable.

10 CHAIRPERSON MITTEN: Let me --

11 MS. DWYER: But I --

12 CHAIRPERSON MITTEN: Let me just -- let me
13 see if I can maybe cut through a little bit, which is,
14 Mr. Herzstein, in terms -- in response to a series of
15 questions that Ms. Dwyer might ask you, do you have
16 more specific conditions at the moment than those that
17 you have outlined in your testimony that we were able
18 to review?

19 MR. HERZSTEIN: No, I do not at the
20 moment. As I mentioned to you, we simply have not
21 felt we could -- that's a big project, and we simply
22 have not had time.

23 CHAIRPERSON MITTEN: Okay, Ms. Dwyer, did
24 you -- did you hear that response?

25 MS. DWYER: I did.

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1 MR. ELLIOTT: Madam Chair, also, prior to
2 these hearing, I met with Mr. Bastida for an hour and
3 a half. And it was my understanding that after the
4 hearings closed, there would be a period for
5 submissions of things the Commission wanted.

6 And then, after that would be a submission
7 of findings of fact, conclusions of law, which would
8 include conditions.

9 CHAIRPERSON MITTEN: Well, to the extent
10 that there's anything left over besides that, at the
11 conclusion of this hearing, yes. But within the
12 context of proposed findings of fact and conclusions
13 of law, you can propose conditions.

14 It's just that in the context of -- or in
15 an effort to try and reach some agreement, you know,
16 through this process, I think the University would
17 have found it helpful if they knew what those were in
18 advance, instead of finding them out when it's really
19 too late to respond.

20 MS. DWYER: And Madam Chair, I make that
21 statement because in Mr. Herzstein's filing, he
22 suggested that perhaps -- that the Board should take a
23 break, have the parties draft conditions, file them,
24 and then have hearings on the conditions.

25 And if that had been done at the

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1 beginning, then tonight's hearing could be a focused
2 hearing on what Building A needs in order to address
3 community concerns.

4 I have one final question for Mr.
5 Herzstein, and that was to ask him whether any of the
6 other neighbors along Woodway Lane or University
7 Avenue have requested the kind of landscaping and
8 buffering you have requested for your property?

9 MR. HERZSTEIN: Well, we are -- as we
10 mentioned at the very first hearing, we're in an
11 unusual situation. We're on the highest point of land
12 in that area. And we have the longest -- we have a
13 450 foot boundary with the University.

14 So, I think our condition is very
15 different. The other neighbors on Woodway Lane are
16 very interested in this proceeding. But none of them
17 has the kind of exposure. They're all lower.

18 As you come up to our house from Woodway
19 Lane, you go up a hill. The other neighbors are all
20 lower, so they don't have that problem.

21 On University Avenue, I think you will be
22 hearing from witnesses who have concerns about that.
23 Everyone's landscaping needs are a little bit
24 different than everyone else's. So, they're not
25 asking for the same kind, but they are very

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1 dissatisfied with the -- or, they are dissatisfied
2 with the current condition there.

3 MS. DWYER: But they haven't requested
4 landscaping or buffering by their properties?

5 MR. HERZSTEIN: Oh, I think they have,
6 yes. On University?

7 MS. DWYER: Yes, the other property
8 owners. Can you indicate, for the record, which ones
9 have requested this landscaping on their property?

10 MR. HERZSTEIN: On their property?

11 MS. DWYER: Right, the property that --
12 the properties that border the University, has anyone
13 --

14 MR. HERZSTEIN: Yes, I think you'll be
15 hearing from Mr. Paul --

16 MS. DWYER: One final question, in -- and
17 this is for Ms. Holmes. In your testimony, you
18 referred to a photograph showing cars parked on an
19 area of the campus. And I just wanted to confirm that
20 you -- I think you went on to say that in the
21 University's latest filing with the -- not the chain
22 link fence, but whatever the vehicular barrier is that
23 the University is proposing, that that condition would
24 be remedied, and that it would not -- there would not
25 be access provided to that area under what we are

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1 proposing.

2 MS. HOLMES: I think you're proposing
3 chain link barrier at the two ends of the circular
4 drive. Is that correct? Because from your drawing, I
5 couldn't tell. Part of your drawing was off the page.
6 I couldn't see if the second part of the links was
7 there or not -- the barrier.

8 And this is a temporary matter until the
9 road is abandoned. Is that correct?

10 MS. DWYER: That is correct. The road is
11 planned to be abandoned, and it is temporary. But the
12 idea was to have a barrier that would prevent any
13 faculty, staff or student cars, or contractors from
14 accessing that area.

15 MS. HOLMES: Absolutely.

16 MS. DWYER: All right, thank you. That's
17 all for those two. I do have some question for Ms.
18 Heynes (sic), the architect. I think it's Heynes --
19 Heyne.

20 Ms. Heyne, just a couple of questions;
21 you seem to indicate that one of your concerns -- or
22 you did indicate that one of your concerns about the
23 building was the length of the building.

24 And isn't it true that the building,
25 however, is broken up into three pieces, with a plaza

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1 separating two of them in order to reduce the visual
2 appearance of the length of the building?

3 MS. HEYNE: It still is one long building.

4 And even though there is a slight indentation there,
5 the central plaza is of such a large scale -- the
6 whole thing still reads as one large building.

7 The indentations are not very substantial,
8 in my mind.

9 MS. DWYER: You raised a concern about
10 handicap accessibility to the building. And isn't it
11 true that the grade of the sidewalk near Ward Circle
12 matches the elevation of the plaza, so that there is
13 handicap accessibility?

14 MS. HEYNE: That's probably where they
15 would, indeed, have to go in. It would -- if they're
16 coming across the road from the University, then they
17 would, of course, have to traverse up the sidewalk and
18 go in.

19 You know, it will be a little bit
20 inconvenient, I think, for a lot of handicapped
21 people.

22 MS. DWYER: Are you aware of the number of
23 times the architectural team has met with the
24 community to review the design? Do you have any idea
25 whether it -- they did meet with the community, like

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1 say, 37 times over the last year and a half, showing
2 different alternatives?

3 MS. HEYNE: I have not been told the
4 precise number of times, but I have been told that the
5 amount of visual information has been inadequate. And
6 the response -- as well, the response is on the
7 boards.

8 MS. DWYER: Are you familiar with the
9 number of changes that have been made to the building
10 as a result of these meetings and community input?

11 MS. HEYNE: There's a -- yes, I am aware
12 that one of the floors was removed. The result of
13 that -- or, rather, it's a series of offices, perhaps
14 it may be a small space, because actually -- I think
15 there were actually classrooms that were removed --
16 removed.

17 And the result of that, though, was there
18 was a corridor remaining, which, once again, is a
19 rather inefficient -- the building is inefficient.
20 And there are extra corridors that, with some
21 redesign, some compression, these extra corridors
22 could be easily eliminated.

23 MS. DWYER: One of the other issues you
24 raised, I think, was a concern about the number of
25 light wells in the building. And are you aware that

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1 part of the intent of the design of the building was
2 to reduce the fenestration on the north side to
3 minimize the impact on the neighbors, and therefore
4 providing these light wells and atrium spaces as a way
5 of day-lighting the interior?

6 MS. HEYNE: I realize that. But it seems
7 to me that if the building were more efficiently
8 designed, these various wings would be further away
9 from the neighbors. And there could be a more
10 variegated facade treatment, and perhaps even
11 occasionally northern windows or northern-sloped,
12 upper-sloped windows could be introduced.

13 There are many ways of handling it. In my
14 estimation -- my mother is a professional portrait
15 painter. In my estimation, most artists tend to want
16 northern light anyway.

17 And I think the needs of the artistic
18 community there are not always well served. And of
19 course, the effect of also having these walls is, of
20 course, to create sort of a stalag kind of atmosphere
21 for the neighbors.

22 And as well-meaning as it might be, I
23 don't think the effect has been a particularly good
24 one.

25 MS. DWYER: In your opinion, would it be

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1 preferable to have windows on the rear side of the
2 building, facing the neighbors?

3 MS. HEYNE: I think the building needs a
4 lot of redesign and needs compression. And it needs
5 to go back to the drawing board, in my estimation.

6 MS. DWYER: Do you know what the height of
7 the building is?

8 MS. HEYNE: The height varies, of course,
9 depending on where you are. On the plaza side, during
10 measuring it from the --

11 MS. DWYER: Measuring it under the zoning
12 regulations?

13 MS. HEYNE: Are we measuring it from the
14 sidewalk? Are we measuring it from the --

15 CHAIRPERSON MITTEN: I believe Ms. Dwyer
16 said we're measuring it --

17 MS. HEYNE: -- plaza?

18 CHAIRPERSON MITTEN: -- from the zoning
19 regulations.

20 MS. DWYER: Under the zoning regulations.
21 You don't -- and just off-hand, do you know that the
22 height is within the 40-foot matter-of-right height
23 for a residential district?

24 MS. HEYNE: I believe that -- yes, that is
25 the -- that is the case.

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1 MS. DWYER: And do you know that one of
2 the concessions or changes made to the building was to
3 include, within the 40-foot height, the mechanical
4 penthouse, so that there is not an additional
5 penthouse above that?

6 MS. HEYNE: That is correct.

7 MS. DWYER: Do you think that that is a
8 plus in terms of the building design, to be able to
9 place that mechanical equipment inside the building,
10 and stay within the same 40-foot matter-of-right
11 height?

12 MS. HEYNE: Well, even though there is a
13 mechanical penthouse that, of course, hides some
14 mechanical equipment, it does result in a big bump-up,
15 the big rotunda. And so, that's where much of the
16 mechanical equipment is. And that's one of the most
17 irritating aspects of the building.

18 Additionally, as I mentioned earlier, the
19 large wall on the plaza level is not really doing
20 anything.

21 MS. DWYER: Turning for a minute to the
22 waterscape and landscaping features, you don't believe
23 that that open landscaped plaza area is in keeping
24 with the significant comprehensive plan, urban design
25 policies for Massachusetts Avenue?

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1 MS. HEYNE: One can look at the landscape
2 in isolation, possibly. But one has to -- it would be
3 better to look at it in the context of the entire
4 building.

5 MS. DWYER: And one final question; your
6 testimony relates to the physical character or
7 architecture of the building. You have not, I assume,
8 done any study of the programmatic needs of an arts
9 center in terms of the spaces needed inside for
10 academics or studio space?

11 MS. HEYNE: There is, as I indicated
12 before, an inordinately large amount of space devoted
13 to corridors and light wells, gathering spaces. And
14 as I note in the site plan, this is supposed to be
15 strictly an academic building.

16 And yet, there is an awful lot of student
17 life space, as far as I'm concerned, in this building.

18 MS. DWYER: And would student life not be
19 part of academic space?

20 MS. HEYNE: I think, to a certain extent,
21 it is. But perhaps, you don't need such a large light
22 well that protrudes into the neighbors' yards the way
23 the one on the -- the panel shows on the left.

24 MS. DWYER: One more question, what
25 percentage of the building is devoted to the corridors

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1 and light wells that you say is so inefficient, or are
2 so inefficient?

3 MS. HEYNE: I can provide that information
4 at a later time if somebody wants the precise
5 percentage.

6 MS. DWYER: Approximately, since you've
7 indicated that that's an issue that you've identified,
8 you must have an approximate number.

9 MS. HEYNE: I would rather not guess. I
10 have looked at this with colleagues in my office, and
11 we have all agreed that this building could be
12 compressed. But I would be very happy to count the
13 various spaces and get that percentage.

14 MS. DWYER: I don't need that presented to
15 the record. I'm just curious if you keep raising as
16 an issue the number of the -- the amount of light well
17 and corridor space and the inefficiency of the
18 building, that you would have an idea of what that
19 percentage is. But if you don't, that's fine.

20 MS. HEYNE: Once again, I will give you
21 that -- I could give you that information.

22 MS. DWYER: That's fine. I don't -- I
23 don't need that file, thank you.

24 CHAIRPERSON MITTEN: Anything else?

25 MS. DWYER: No, that's it.

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1 CHAIRPERSON MITTEN: Very good. Anyone
2 here from ANC-3D? Oh, Ms. Hamilton, I didn't see you
3 there. Come on up. Did you have some cross
4 examination?

5 MS. HAMILTON: Not right now.

6 CHAIRPERSON MITTEN: Mr. DiBiase -- I
7 didn't see Ms. Quynn. Oh, is she here? Okay. Do you
8 have any cross examination? Come on up.

9 MR. DiBIASE: May I sit with my colleague?
10 I don't think I --

11 CHAIRPERSON MITTEN: Sure, you can sit
12 with her.

13 MS. QUINN: Mr. Bilecky, there were two
14 traffic studies that were done as part of the plan.
15 Do you know why that was, or what the reason was for
16 two studies?

17 MR. BILECKY: I can offer my conjecture.
18 Really the three --

19 CHAIRPERSON MITTEN: I'd rather not have
20 you guess about it. If you don't know the answer,
21 then -- and I assume this relates to your written
22 testimony that we didn't hear you present orally.

23 MS. QUINN: Yes.

24 CHAIRPERSON MITTEN: But if you don't know
25 the answer, please don't guess about the answer.

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1 MR. BILECKY: Then I know the answer.

2 (Laughter.)

3 CHAIRPERSON MITTEN: Just remember you
4 stood up and took the little oath.

5 MR. BILECKY: I know -- I know the answer.

6 (Laughter.)

7 CHAIRPERSON MITTEN: Go ahead, go ahead.

8 MR. BILECKY: I wrote a three-page
9 critique of the first traffic study that was submitted
10 in the original filing of the campus plan, and it was
11 filed in August. I sent my three-page critique to AU;
12 I believe it was dated September 7th.

13 I got a written response back from AU and
14 their traffic consultant. And I cited -- and what my
15 critique essentially did was point out the numerous
16 flaws, contradictions and errors in the originally-
17 submitted study.

18 And that was simple math, simple counting
19 cars, simple integrating of their movements and their
20 calculations, and then showing that their conclusions
21 did not gel with what their math should have told
22 them.

23 The result was that AU commissioned a peer
24 review, as they explained it to us, to review that
25 original study. And the result was a completely

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1 revised submission that was delivered on December
2 11th.

3 CHAIRPERSON MITTEN: Thank you.

4 MS. QUINN: Okay. And then, what -- what
5 was the date of the original hearing? Was it the
6 12th?

7 MR. BILECKY: Yes, it was.

8 MS. QUINN: Okay. So, perhaps part of the
9 reason why the first hearing was postponed was to give
10 the community representatives more than a day to look
11 at the second traffic study.

12 MR. BILECKY: That's conjecture.

13 (Laughter.)

14 MS. QUINN: Okay, okay. Are there any
15 specific points that you feel the study didn't take
16 into consideration, the second -- the second study?

17 MR. BILECKY: Yes, and a couple of points
18 have been made through cross examine (sic). I believe
19 at the last hearing, the Zoning Commission directed
20 the traffic consultant or AU to address or redress the
21 issue of the traffic signal manipulation on the Glover
22 gate where they use the ten-second crosswalk.

23 I don't know that that's been done. We
24 have not seen the revised study with that work. But
25 the point that I made in the original September 7th

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1 critique was that pedestrian impacts weren't included,
2 and actual traffic movements were not analyzed.

3 They analyzed one thing in the technical
4 appendix, and then stated another thing in the soft,
5 front end of the manual. And so, it's my -- the
6 current study that came in, in -- on December 11th
7 still is extremely flawed in that it allows left turns
8 off of Massachusetts Avenue into the campus and into
9 the arts center, which are contrary to DPW's
10 recommendations.

11 It does not include pedestrians, and it
12 has traffic signal manipulation that is not consistent
13 with the way that intersection is supposed to work.

14 MS. QUINN: Thank you. That's all that I
15 have.

16 CHAIRPERSON MITTEN: Mr. Bilecky, is that
17 outlined in your written testimony?

18 MR. BILECKY: Yes.

19 CHAIRPERSON MITTEN: Okay, thank you.

20 MS. DWYER: I have a question I'd like to
21 ask.

22 CHAIRPERSON MITTEN: Sure.

23 MS. DWYER: Mr. Bilecky, you're not a
24 traffic engineer, are you?

25 MR. BILECKY: Oh, I've been waiting for

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1 this one.

2 (Laughter.)

3 MS. DWYER: Go ahead.

4 MR. BILECKY: No. And if the study is so
5 flawed that a common citizen can find the errors --

6 (Laughter, applause.)

7 MS. DWYER: Were the conclusions in the
8 second traffic study the same as in the first?

9 MR. BILECKY: Mostly. There were some
10 changes and some LOS's changed. Some traffic counts
11 changed. But again, the conclusions of the first were
12 as flawed as the second.

13 MS. DWYER: So, you disagree with both
14 traffic studies. Do you also disagree with DPW's
15 report of --

16 MR. BILECKY: I believe DP -- yes, DPW --
17 and I've spoke to DPW, that they have not done a
18 dutiful review of the technical appendix. If they
19 only review the front end of the traffic study and do
20 not go into the detail, which they did not do, of the
21 technical appendix, where all the counts are that
22 generate the dialogue in the front of the book, those
23 two conflict.

24 MS. DWYER: Those are all the questions I
25 have.

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1 CHAIRPERSON MITTEN: Thank you.

2 MR. ELLIOTT: Would you state your
3 profession?

4 MR. BILECKY: I'm a professional old
5 mechanical engineer.

6 MR. ELLIOTT: Thank you.

7 CHAIRPERSON MITTEN: Thank you.

8 MS. HAMILTON: Now, can I --

9 CHAIRPERSON MITTEN: Sure, come on.

10 MS. HAMILTON: I have a --

11 CHAIRPERSON MITTEN: Turn on your mic
12 there. State your name for the record, just the first
13 time.

14 MS. HAMILTON: Tonya Hamilton, Advisory
15 Neighborhood Commission 3D. I have a question for Mr.
16 Herzstein. A few minutes ago, one of the questions
17 presented to you was during our 14 months of hearings
18 with -- or meetings, weekly, biweekly, with the
19 University, were there specific suggestions made at
20 some of those meetings from the citizens to the
21 University about changes that might be made to
22 specific buildings?

23 MR. HERZSTEIN: Yes, there were.

24 MS. HAMILTON: And what was the
25 University's response to those suggestions?

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1 MR. HERZSTEIN: Well, it was very rare
2 that we got any response. There would be sort of a
3 silence. And then, the next week, we would go on to
4 another subject.

5 Sometimes, it was an explanation of why it
6 couldn't be done. Let's take Building K, for example,
7 which we said was -- we felt was much too high, and
8 was going to hurt the quality of Massachusetts Avenue
9 badly.

10 There was a plat that came in with a
11 couple of alternative drawings as to how it might be
12 done. But that was -- that was the response, as I
13 recall it.

14 In other cases, like the bleachers, we
15 said that's not something that we think can be
16 consistent with the neighboring community. And we got
17 no response on that.

18 MS. HAMILTON: Thank you.

19 CHAIRPERSON MITTEN: Thank you.

20 MS. DWYER: Mr. Herzstein, you mentioned
21 Building K. When the University first proposed
22 Building K, until the present application, what -- it
23 has been reduced in size, has it not?

24 MR. HERZSTEIN: Well, yes --

25 MS. DWYER: By about -- by about how many

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1 square feet, about 30,000?

2 MR. HERZSTEIN: Oh, I thought the -- I
3 thought the first one was so ridiculous, it wasn't
4 even in my mind. When I mentioned Building K, I was
5 talking about the currently proposed Building K. I
6 think --

7 MS. DWYER: But that's -- there was a
8 previous building that was 30,000 --

9 MR. HERZSTEIN: I think they're --

10 MS. DWYER: -- square feet larger, and it
11 was reduced as a result of community input. Was the
12 height of that building reduced from 80 feet to 50
13 feet, as a result of the community meeting process?

14 MR. HERZSTEIN: I don't remember.

15 MS. DWYER: All right.

16 MR. HERZSTEIN: It may have been. I think
17 the original Building K, as I recall it, came right
18 down to Mass. Avenue and had a -- had an access for
19 cars into it from that side. And that --

20 MS. DWYER: But the point is, that it
21 changed as a result of --

22 MR. HERZSTEIN: Yes, okay.

23 MS. DWYER: -- comments made by the
24 community --

25 MR. HERZSTEIN: I'll grant you that.

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1 MS. DWYER: -- during the meeting process.

2 Thank you.

3 MR. HERZSTEIN: That one changed, not very
4 far -- not satisfactorily, but it changed.

5 MS. DWYER: Okay, thank you.

6 CHAIRPERSON MITTEN: We'd like to do our
7 assessment now. And I think I'd like Mr. Wilson or --
8 yes, Mr. Wilson to come -- were you done, Ms.
9 Hamilton?

10 MS. HAMILTON: May I ask another question?

11 CHAIRPERSON MITTEN: Yes, sorry about
12 that.

13 MS. HAMILTON: Moving from Building K,
14 were there other specific suggestions made about other
15 buildings from the citizens to the University?

16 CHAIRPERSON MITTEN: Ms. Hamilton, just --
17 why do you want to go through this? I mean, what we
18 have generally gathered is that there have been some
19 suggestions made that were taken, either in whole or
20 in part, by the applicant, and then some suggestions
21 by the community have been ignored.

22 MS. HAMILTON: I just wondered if that
23 needed more elaboration.

24 CHAIRPERSON MITTEN: No. I think, at this
25 point, the answer to that is no, if that's all right

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1 with you. Thank you. Now, we'll have Mr. Wilson come
2 up and help us do our assessment.

3 We're going to give you ten minutes to do
4 -- to present your case in opposition. And you don't
5 have the benefit of having been here through the
6 original cross examination. But you know, we would
7 like to maintain a balance between the direct
8 testimony and the cross examination.

9 And we're sort of -- we've achieved that
10 balance. So, do you have a relatively brief cross
11 examination for the applicant or --

12 MR. WILSON: Well, I can't tell you that
13 it's going to be as brief as the presentation about
14 the Tenley Campus, because that presentation was
15 essentially non-existent.

16 I have significant ground to cover about
17 the Tenley Campus, because there has been no
18 presentation about the Tenley Campus. And there are
19 many things in the campus plan that have been utterly
20 ignored, and that are incredibly important to me and
21 to my neighbors.

22 I cannot tell you that I will have less
23 than maybe half an hour or 45 minutes. But I don't
24 know what kind of answers I'm going to get either.

25 CHAIRPERSON MITTEN: And are you going to

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1 be confining your questions to the Tenley Campus?

2 MR. WILSON: Correct, that is all.

3 CHAIRPERSON MITTEN: All right, just bear
4 with me a second.

5 MR. WILSON: Sure.

6 CHAIRPERSON MITTEN: If we could come back
7 to order? We're going to try and beat -- get a
8 cooperative effort towards being fair to everyone.
9 What's been suggested is we've had these nice people
10 who want to testify come back many times.

11 And I know that Ms. Dwyer had her panel of
12 folks come back specifically to be cross examined
13 tonight. If we were to allow the persons in
14 opposition to testify tonight, and then we would
15 reschedule you to the 30th of April --

16 SECRETARY BASTIDA: That is correct, Madam
17 Chairman.

18 CHAIRPERSON MITTEN: -- could you bring
19 your folks back for a cross examination?

20 MS. DWYER: Number one, we can bring them
21 back because they would be back anyway for rebuttal.

22 CHAIRPERSON MITTEN: Okay.

23 MS. DWYER: We do -- we have rebuttal.
24 So, that's not the problem. The problem is the date.
25 There's a conflict with April 30th with American

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1 University with George Abud. And I haven't checked
2 with the other people on the team.

3 Is there any possibility of an earlier
4 hearing date than April 30th?

5 CHAIRPERSON MITTEN: We'll see what Mr.
6 Bastida has.

7 SECRETARY BASTIDA: That's a possibility.
8 My concern is that Mr. Elliott has told me that he
9 has previous engagements. Basically, he is
10 unavailable until the 30th.

11 MS. DWYER: Is there any -- perhaps Mr.
12 Herzstein could ask the questions in his absence?
13 We're talking about limited questions of any rebuttal,
14 as opposed to the major portion of our testimony.

15 But waiting until April 30th, or in this
16 case, it would have to be May because of the conflict
17 with the applicant, is a significant loss of time.

18 CHAIRPERSON MITTEN: Okay, Mr. Elliott,
19 work with us here.

20 MR. ELLIOTT: I can be -- how about the
21 Thursday after the 30th? I'm here that week. I have
22 severe problems up until then that's --

23 CHAIRPERSON MITTEN: That's not working
24 with the rest of the folks on the panel.

25 MR. ELLIOTT: Mr. Abud's --

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1 CHAIRPERSON MITTEN: Well, now, it would
2 someone else that would have a problem.

3 MR. ELLIOTT: I see.

4 CHAIRPERSON MITTEN: So, we need you to be
5 --

6 MS. DWYER: Is there a prior date, Mr.
7 Elliott? Is there a prior time in the month of April
8 that you would be available?

9 CHAIRPERSON MITTEN: Or that you would,
10 you know, deputize someone to ask the questions in
11 your -- in your absence?

12 MR. ELLIOTT: It would probably be another
13 counsel, which is very difficult in a thing this
14 complex.

15 CHAIRPERSON MITTEN: Take two minutes and
16 confer. And then, I mean, we'll really -- I mean, we
17 really would like to accommodate the folks that have
18 come down repeatedly --

19 MR. ELLIOTT: Yes, of course.

20 CHAIRPERSON MITTEN: -- and so we -- and
21 Ms. Dwyer has been very generous in providing the
22 opportunity for Mr. Wilson to cross examine these
23 folks. Now, one alternative, I suppose, would be if
24 we stuck with the 30th, and Mr. Wilson submitted
25 questions for Mr. Abud to answer in writing.

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1 MS. DWYER: Well, Mr. Abud is giving part
2 of the rebuttal testimony --

3 CHAIRPERSON MITTEN: Okay.

4 MS. DWYER: -- so he'll be giving direct
5 testimony. I think for the University, their key
6 person who has been involved in this process really
7 needs to be there.

8 CHAIRPERSON MITTEN: Okay. I keep
9 forgetting about the rebuttal part.

10 MS. DWYER: No date earlier than -- any
11 chance you can fly back from -- or teleconference,
12 video-conference?

13 MR. ELLIOTT: Well, this -- it's just very
14 difficult for me, Madam Chair, to come prior to that
15 date.

16 COMMISSIONER PARSONS: Ms. Dwyer, I don't
17 think I heard a real explanation of what's wrong with
18 May 3rd, the Thursday of that week, from your
19 perspective.

20 VICE CHAIRPERSON HOOD: I agree with you,
21 Mr. Parsons. I think, if I can just interject -- I've
22 been sitting -- we've been accommodating all this
23 time. I think we should accommodate especially the
24 counsel for -- to return on one of those dates.

25 I just think that if we're going to make

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1 -- we've been accommodating all this time --

2 CHAIRPERSON MITTEN: How about May 3rd?
3 Is May 3rd no good?

4 MS. DWYER: Let me check with -- can we
5 maybe take a two minute break and I can find out?

6 CHAIRPERSON MITTEN: Okay, sure, sure.
7 That's good.

8 MS. DWYER: Thank you.

9 CHAIRPERSON MITTEN: Thank you, two
10 minutes.

11 (Whereupon, the proceedings went off the
12 record at 9:59 p.m. and resumed at 10:04 p.m.)

13 CHAIRPERSON MITTEN: Come back to order,
14 please. Perhaps you didn't hear me. Please take your
15 seats. Ms. Dwyer or Mr. Elliott, have you come up
16 with anything?

17 MR. ELLIOTT: Mr. Herzstein is going to be
18 in Mexico, and it's his work, trade work, that week of
19 the 23rd.

20 CHAIRPERSON MITTEN: I'm going to ask you
21 all to please sit down and be quiet.

22 MR. ELLIOTT: Ms. Dwyer says that the
23 primary problem is Mr. Kleinrock has some appearance
24 out of town on the 30th. We haven't been able to work
25 anything out.

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1 MS. DWYER: Madame Chair, I wanted to
2 first state that I think that the University, the
3 Applicant in this case, has been more than
4 accommodating. This application was filed in August.

5 We postponed our December hearings in order to allow
6 facilitation, and we've had two months of hearings.

7 At this point, it is very prejudicial to
8 the University's plans in going forward with this
9 project to delay it for a month, which is what it
10 sounds like will happen, because if the 30th does not
11 work for the University and its architectural team
12 that week. The following week, as I understand it,
13 doesn't work for Mr. Herzstein, and we're in the
14 middle of May.

15 I would submit that there is some date in
16 April that Mr. Elliott could get someone else from his
17 office. If we were in the middle of a court trial,
18 the court would not say everything is suspended
19 because the attorney has other commitments. You have
20 a team. You have someone else step in, and I think
21 that we need that accommodation now.

22 MR. ELLIOTT: It's a little confusing
23 about Mr. Herzstein. It's the week before where he'll
24 be out of the country, not the week after.

25 CHAIRPERSON MITTEN: Okay, well within the

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1 time frame that we'd like to work in, which is the
2 month of April, what's remaining in the month of
3 April, I need you to come up with a plan that will
4 allow us to go forward within the month of April.

5 MR. ELLIOTT: And April 30th is out
6 because of Mr. Kleinrock. I mean, I'm sure we'll
7 finish at the next hearing.

8 MS. DWYER: Mr. Abud.

9 MR. ELLIOTT: Oh, Mr. Abud on the 30th.
10 Couldn't someone substitute for him?

11 CHAIRPERSON MITTEN: He's part of their
12 rebuttal.

13 MR. ELLIOTT: I mean, they have --

14 MS. DWYER: Mr. Elliott, is there another
15 date in April was the question. Is there another?

16 MR. ELLIOTT: Well, when we take into
17 account Mr. Herzstein's schedule and mine, I mean,
18 we're definitely back to prior to the 23rd.

19 CHAIRPERSON MITTEN: Mr. Bastida, what do
20 we have prior to the 23rd available?

21 MR. BASTIDA: Well, we could do it on the
22 19th or on the 23rd.

23 MR. ELLIOTT: The 23rd is impossible for
24 Mr. Herzstein.

25 MR. BASTIDA: How about the 19th?

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1 CHAIRPERSON MITTEN: The 19th?

2 MR. ELLIOTT: I'm sorry.

3 CHAIRPERSON MITTEN: The 19th?

4 MR. ELLIOTT: I probably will not be here.

5 I think you just have to decide this. Every single
6 date has conflicts.

7 CHAIRPERSON MITTEN: Yes, and we're laying
8 it on you to decide. Pick a day in April and decide
9 how you're going to deal with the fact that if, in
10 fact, you can't be there, how you're going to handle
11 that.

12 MR. ELLIOTT: Well, then I just refer to
13 Mr. Herzstein's schedule. He can't be here the week
14 of the 23rd.

15 CHAIRPERSON MITTEN: All right.

16 MR. ELLIOTT: And I have conflicts earlier
17 than that. So, I guess the Commission will, if you
18 choose a date earlier than the 23rd, you will have to
19 select the date and see what happens.

20 CHAIRPERSON MITTEN: All right. I'm going
21 to propose the date of April 19.

22 SECRETARY BASTIDA: That is available,
23 Madame Chairman.

24 CHAIRPERSON MITTEN: Does that work with
25 the commissioners?

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1 SECRETARY BASTIDA: That's a Thursday.

2 CHAIRPERSON MITTEN: Does that work?

3 VICE CHAIRPERSON HOOD: I don't know.

4 CHAIRPERSON MITTEN: What are your
5 concerns?

6 VICE CHAIRPERSON HOOD: I just think that,
7 you know, we've been accommodating all the way, so I
8 mean you know, might as well continue. That's just my
9 opinion. I understand. Ms. Dwyer, let me ask you,
10 what is the urgency?

11 MS. DWYER: The urgency is that they have
12 a donor and are ready to go forward with further
13 processing for the arts center, and they delayed the
14 filing of the campus plan as a result of meetings with
15 the community. They delayed their first hearing date,
16 and at some point, they need to move forward with
17 their plans.

18 VICE CHAIRPERSON HOOD: Madame Chair, I
19 will defer to you.

20 CHAIRPERSON MITTEN: Well, I mean, the
21 University has accommodated the requests by the
22 community for postponement, and we're just trying to
23 bring this to closure, and we'd also like to get
24 through the persons in opposition tonight. So, I
25 would like to just get some closure on this discussion

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1 about when we're going to reschedule.

2 VICE CHAIRPERSON HOOD: That's fine with
3 me.

4 CHAIRPERSON MITTEN: Is that all right?

5 MS. DWYER: All right.

6 CHAIRPERSON MITTEN: Seven p.m.

7 MS. DWYER: Thank you.

8 CHAIRPERSON MITTEN: So, Mr. Wilson,
9 you'll have a little longer opportunity then to
10 prepare questions on cross examination.

11 Mr. Bastida informs me that we have two
12 students from the University who are here, and they
13 are not persons in opposition. We've already had
14 persons in support. So, if the students want to
15 submit written testimony, we'd be happy to receive
16 that, but we're not going to go back. This is why we
17 can't really seem to get moving through this case is
18 because we keep taking detours. So, that's one detour
19 we're not going to take, but we would be more than
20 happy to receive that written testimony.

21 If you're going to speak, then you need to
22 come to the microphone. Identify yourself for the
23 record, please.

24 MR. HURST: Okay. My name is Michael
25 Hurst, Advisory Neighborhood Commissioner, 3D-07. I

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1 just want to testify based on my views from the Office
2 of Planning report, my experience with the ANC
3 meetings, and other information like that. So, I just
4 wanted to testify based on the interest of my
5 constituents, who actually live on the American
6 University campus.

7 CHAIRPERSON MITTEN: But you consider
8 yourself a person in opposition?

9 MR. HURST: It would be conditional
10 support. Basically, it's sort of along the lines of
11 the Office of Planning report, conditional support, a
12 few changes here and there.

13 CHAIRPERSON MITTEN: Well, that's support.
14 So, I'm just going to ask you to submit that
15 testimony in writing because we've already had the
16 opportunity for persons in support, and we have a
17 procedural order that we stick to. So, we're more
18 than happy to review your testimony. We just can't
19 take it orally this evening.

20 MR. HURST: Okay, so you're only going to
21 take the opposition?

22 CHAIRPERSON MITTEN: That's where we are
23 in the procedure, and we're trying not to backtrack
24 too much.

25 MR. HURST: Oh, okay.

1 CHAIRPERSON MITTEN: But we'd be more than
2 happy to receive your written testimony.

3 MR. HURST: Okay.

4 CHAIRPERSON MITTEN: Thank you. The way
5 we'll proceed is I have a list here of persons who
6 signed up to testify in opposition, and I'll call you
7 forward in panels. I understand there are folks from
8 the Ft. Gaines neighborhood, and I'll begin by calling
9 them up in two panels of three just to facilitate your
10 testimony. Jane Khoury, Johnny Cristaldi, Alan
11 Pollock.

12 MS. KHOURY: Can we choose the order in
13 which we testify?

14 CHAIRPERSON MITTEN: Sure, that's fine.

15 MS. KHOURY: Mr. Pollock will testify
16 first.

17 CHAIRPERSON MITTEN: Okay, and you each
18 have three minutes. Even though you're in a panel, if
19 you'd hold your seats, we'll ask the questions to the
20 panel at the conclusion.

21 We've been dying to see what's in that
22 bag.

23 MR. POLLOCK: Sorry, it's rather
24 underwhelming.

25 CHAIRPERSON MITTEN: Now, I guess we're

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1 going to begin with Mr. Pollock, and I just ask you to
2 direct that microphone, if you're going to stand, just
3 direct that microphone towards yourself.

4 MR. POLLOCK: I don't think there will be
5 a problem with the microphone picking me up.

6 CHAIRPERSON MITTEN: Okay.

7 MR. POLLOCK: I just need to get my papers
8 out. I have hand-outs. Do I give them to you?

9 CHAIRPERSON MITTEN: Give them to Mr.
10 Bastida, and he'll give them to us. Ready to roll?

11 MR. POLLOCK: Wait a minute. Don't start
12 that clock yet. Three minutes, huh?

13 CHAIRPERSON MITTEN: I know you can do it.

14 MR. POLLOCK: I'll get close. Go.

15 Alan Pollock, 4428 Sedgwick Street, N.W.
16 You have two ANC's and five neighborhood associations
17 in opposition. That would make anyone want to look
18 very carefully at this application.

19 You have a population cap, an overstuffed
20 art center design, and simple act of trying to cross
21 Massachusetts Avenue. In the '89 campus plan, my
22 neighbor proposed a 130,000 square foot building next
23 to my home on the Cassell site. Among our concerns at
24 that time were building height and light, lost
25 sunlight, noise, building use.

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1 My neighbors showed some understanding for
2 its fellow neighbors and lessened the impact of that
3 building by keeping the building pretty much in the
4 Cassell footprint, lowering the main building into the
5 ground so that the tallest part at that time was
6 actually lower than the Cassell gymnasium. My
7 neighbor's law library dropped down at the northwest
8 end as the land fell away.

9 So, what happened? Well, my neighbor
10 boxed themselves in this time. He took away his
11 options. He took away his flexibility. He stuffed
12 too much into the narrow piece of dirt, and if he had
13 that flexibility, I know he would want to do the right
14 thing, as he did in '89.

15 Now, the arts center flows from Ward
16 Circle on top of the parking lot garage, and it's on a
17 level plane. As the land falls away from my house,
18 the arts center, by not adhering to the land, rises
19 skyward behind my home. You've heard measurements
20 talked about before over two-thirds the size of FedEx
21 stadium. Four Washington monuments, two on top of
22 each other. Almost two USS Greenville submarines.
23 4.4 Statue of Liberties that would fill this. It's
24 big and it's long.

25 CHAIRPERSON MITTEN: That's one minute

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1 left.

2 MR. POLLOCK: Look at page one of the
3 handout I gave you, Exhibit 11. Under the original
4 plan, my home would lose over an hour of sunlight
5 during the wintertime, just as the sunlight is so
6 precious. The lost measure is about 63 minutes of
7 lost sunlight. Real time shadow tests confirm the
8 loss.

9 Now, if you look at page 4 -- sorry to
10 have to switch -- because of its huge size, I felt
11 that the entire third floor of the northwest end
12 should be relocated. I tried to compromise with the
13 University and suggested that only that portion up to
14 the skylight be relocated. This is 100 feet wide, and
15 this is the only area that we tried to compromise on.

16 Now, if you go back to page two, the
17 University hasn't said boo about blocking my view.
18 Directly behind my home is a 33-foot wide view of
19 trees on both sides of Mass Avenue, trees in front of
20 Lattner's office, and we can see Hughes and McDowell
21 Hall on the main campus. We've enjoyed this view for
22 46 years.

23 To sum up, look, the University is willing
24 to raise the ground to cover the parking garage.
25 Shouldn't they also be willing to dig a bit deeper,

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1 lower the ground level to solve its design problems,
2 as well as the main neighborhood impact.

3 I believe I've shown you factual,
4 objectionable issues behind my home, masking loss of
5 sunlight, blocking my view. Never been against an
6 arts center, never said not in my back yard. From day
7 one, we said we were willing to work with our neighbor
8 on a reasonable design.

9 I'm not being unreasonable in the relief
10 that I'm asking from you. The design is too big for
11 the site. The northwest end is too high. We have no
12 fair agreement to deal with this campus plan.

13 Please tell my neighbor to try a little
14 harder, adjust the third floor, dig a little deeper,
15 and lower the northwest end. We feel that is a fair,
16 equitable balance in this application.

17 So, I ask the Commission to remand the
18 plan back to the University for two changes, a
19 realistic enforceable campus plan and create a
20 suitable arts center design for the Cassell site or
21 find an appropriate site for the current design.

22 CHAIRPERSON MITTEN: Thank you, Mr.
23 Pollock. Why don't you have a seat while these other
24 folks testify, and then we may have some questions for
25 you.

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1 MR. POLLOCK: I'm sure you do.

2 CHAIRPERSON MITTEN: Shall we go with Mr.
3 Khoury next? You might need to snake that mike.

4 MS. KHOURY: Yes. I'm not as booming.
5 Thank you.

6 My name is Jane Khoury, and I live at 4436
7 Sedgwick Street. My home abuts the side of the Katzen
8 Arts Center, and the northwest end of the building
9 would be erected directly behind my back yard. I
10 support the remarks of Mike Bilecki on behalf of the
11 Fort Gaines Citizens Association and my other Sedgwick
12 Street neighbors concerning the height and mass of the
13 proposed Katzen Arts Center and its adverse impact on
14 my home.

15 I'd like to focus my testimony on a few
16 diverse points which I believe the Commission should
17 consider prior to rendering a decision on whether the
18 current design of the arts center should be approved.

19 First, in a meeting between the University, the
20 architect, and the Fort Gaines neighborhood, the
21 architect used the word urban to describe his design
22 of the Katzen Arts Center. That is, no doubt, a very
23 good description of this building design, and I would
24 agree that in a true urban environment, this building
25 would probably not infringe on the adjacent

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1 residential use.

2 However, the neighborhood surrounding
3 American University are not really urban. Though part
4 of the District of Columbia, Fort Gaines, Spring
5 Valley and AU Park are more akin to suburban
6 neighborhoods where low density, single family homes
7 with private, sunny back yards are taken for granted.

8 As such, the urban design of the Katzen Arts Center
9 dwarfs the adjacent homes, needlessly blocks sunlight,
10 and raises privacy and security concerns.

11 Second, in another meeting between the
12 University and the neighborhood, it became clear that
13 the immensity of this building is not merely dictated
14 by the needs of the University's art program, but also
15 by the desires of the donor. As the Commission
16 considers whether the benefits of the Katzen Arts
17 Center outweigh the negative impact of this building
18 on the adjoining residences, it should also consider
19 whether the size of this building is really justified
20 by the needs of the University.

21 Third, I support wholeheartedly the
22 recommendation of the D.C. Office of Planning to
23 require the University to test the soil of the Katzen
24 Arts Center site prior to issuance of a building
25 permit. The University proposed in its campus plan,

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1 "to facilitate a meeting with the Army Corps of
2 Engineers and neighboring residents to discuss the
3 Army's process, surveying the site for potential World
4 War I buried material."

5 Since the time that condition was
6 proposed, more serious health concerns have come to
7 light, which make it grossly unfair to place the
8 burden on the neighbors for insuring the environmental
9 safety of the site. Accordingly, I would urge the
10 Commission to adopt the OP proposal.

11 Fourth, I recently have been informed by
12 other neighbors that the land where the Katzen Arts
13 Center will be built was the site of the Civil War
14 fort, Fort Gaines, from which the neighborhood takes
15 its name. As such, it may be an important
16 archeological site which merits careful study before
17 being further disturbed by the demolition of the
18 Cassell Center and the construction of the Katzen Arts
19 Center. I don't know much about it, something that
20 perhaps the Commission should consider.

21 Finally, I consider American University to
22 be a fine neighbor and greatly appreciate their
23 generosity in sharing their facilities with this
24 community. I do not oppose the concept of an arts
25 center on the Cassell Center site. However, the

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1 Katzen Arts Center as currently designed is
2 inconsistent with the contiguous residential use.

3 Accordingly, I would respectfully request
4 the Commission to deny the application of American
5 University for approval of its 2000 campus plan until
6 the building can be redesigned in a manner harmonious
7 with the adjacent residential property use.

8 Thank you.

9 CHAIRPERSON MITTEN: Thank you, Ms.
10 Khoury. Mr. Cristaldi?

11 MR. CRISTALDI: Yes. Let me pass these
12 over.

13 CHAIRPERSON MITTEN: Please do.

14 MR. CRISTALDI: My name is John Cristaldi.
15 I'm at 4424 Sedgwick Street. I've come to these
16 meetings. I think this is probably my fourth time
17 here, and I've listened to the lawyers, and I've
18 listened to both sides as everybody has made their
19 testimony, and it seems like I'd like to speak some
20 English here, sort of speak to the common folk.

21 One picture does speak a thousand words.
22 For those that can't see it over here, you can look in
23 the back. This is what I'm going to have to face. I
24 live directly behind what I call the Exxon oil tanker.
25 When you go down 395, you see the Exxon oil tankers,

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1 and that's what I'm going to have to look at. I don't
2 want to look at that.

3 When I was a kid, I wanted to live by the
4 Lincoln Memorial, but I'm an adult now. I don't want
5 to live by a memorial, not a rotunda. It is too big.

6 It does not blend in the neighborhood. Again, it
7 doesn't matter what you have, as long as it blends it,
8 it's going to look good. This isn't cutting it. It
9 doesn't look good.

10 AU has never really listened to the
11 neighbors or -- well, maybe not listened, but they
12 have ignored the neighbors' demands to lower this
13 building. You know, I come from a musician
14 background. I love the arts. I love music. I
15 wouldn't mind seeing the arts center there, but come
16 on now, this has got to blend in with the area, and it
17 does not.

18 We already have problems now with parking.
19 This is going to be even worse now. Today, I
20 couldn't park in front of my house. I have AU
21 students parking there. So, we already have a parking
22 problem. This is going to make it a lot worse.

23 You know, I mean, I haven't prepared three
24 minutes of talk. A picture speaks a thousand words.
25 Lower the height of the building. If you're a good

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1 engineer and a great architect, you can do that, and I
2 don't think it's been done.

3 Thank you.

4 CHAIRPERSON MITTEN: Thank you, Mr.
5 Cristaldi. Any questions for these folks?

6 I'd like to just pose Mr. Franklin's
7 question that he asked related to the original use of
8 the Cassell building and what that use was and its
9 impact on you, and specifically as it relates to the
10 service road at the back, if any of you lived there
11 when that building was in use.

12 MR. POLLOCK: It brings up what the
13 neighbor who said you should have known what you were
14 getting into before you moved into the area. I moved
15 there in 1955. I've lived behind that gymnasium and
16 swimming pool. It depends on the time. Are you
17 referring to what it's been like in the last five
18 years or ten years?

19 CHAIRPERSON MITTEN: Well, it's been
20 closed for some time, is that right?

21 MR. POLLOCK: Well, no, parts of it have
22 been left open for art students.

23 CHAIRPERSON MITTEN: Well, let's deal with
24 at it's greatest impact to you as a building. What
25 was the use and what was it like on the service road

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1 behind?

2 MR. POLLOCK: Well, people would come to
3 park. There are a lot of parking spaces there. Most
4 of the time, it was reasonable. Occasionally, you'd
5 have noisy cars. Occasionally you had basketball
6 games, sporting events in the gymnasium. You had
7 concerts. We had a steady stream of phone calls to
8 the university. It would take awhile to get certain
9 things under control. The swimming pool, certainly
10 neighbors would bring their children to the swimming
11 pool.

12 CHAIRPERSON MITTEN: Which was open to the
13 outside?

14 MR. POLLOCK: Yes. It was open on
15 weekends. It was all daytime activity as far as that
16 is concerned.

17 CHAIRPERSON MITTEN: But let me just make
18 sure I ask my question right about the swimming pool.
19 It's an outside swimming pool?

20 MR. POLLOCK: No.

21 CHAIRPERSON MITTEN: Or, it's an inside?

22 MR. POLLOCK: It's an inside.

23 CHAIRPERSON MITTEN: Okay. I think that's
24 sufficient to answer Mr. Franklin's question. Thank
25 you.

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1 MR. POLLOCK: Okay.

2 CHAIRPERSON MITTEN: Anybody else?

3 SECRETARY BASTIDA: The staff has
4 requested in order to have that exhibit into the file,
5 we need to have a picture of it because there is no
6 way we can --

7 MR. POLLOCK: I'm not taking this home.

8 SECRETARY BASTIDA: Yes, you are. I need
9 a picture of it to be able to put into the file.

10 MR. POLLOCK: Do you have a camera?

11 CHAIRPERSON MITTEN: Mr. Herzstein has a
12 camera.

13 SECRETARY BASTIDA: Yes, with several
14 lenses.

15 MR. POLLOCK: I'll be submitting my
16 testimony, and I will take some pictures of this.

17 CHAIRPERSON MITTEN: And we do hope
18 they'll be color photos.

19 SECRETARY BASTIDA: That's right. It's a
20 beautiful shade of pink.

21 CHAIRPERSON MITTEN: Did you have some
22 questions?

23 MS. DWYER: I just have a couple of
24 questions. Mr. Pollock, how did you determine the
25 loss of sunlight?

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1 MR. POLLOCK: We started meeting with the
2 University January 31 of 2000, and one of the things
3 the neighbors asked for was to try and get a better
4 idea of the arts center and what it would look like.

5 CHAIRPERSON MITTEN: Are you going to be
6 answering the question about sunlight?

7 MR. POLLOCK: Yes. It took them until
8 about January 8 of 2001 to put a scaffold up and,
9 thanks to our facilitator, the scaffold would show the
10 height of the building and the closeness to the
11 neighborhood. When you're determining loss of
12 sunlight, obviously you have to have some reference
13 points.

14 So, in my home, I used five of the rear
15 windows and put a mark which was at the same height as
16 the scaffolding and would check each day as the sun
17 would pass the top of the scaffolding to my left,
18 which was the height of the proposed arts center, and
19 would look at the clock and would follow it down until
20 it set behind the existing swimming pool, which is
21 directly behind my house, and would mark the time.

22 Now, it was about 63 minutes. To make
23 sure that was accurate, and of course, I would check
24 all five points along the house, as well as check the
25 shadows as they moved across the homes on the opposite

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1 side of the street to see whether that time was also
2 accurate. And to make sure that this was correct, I
3 did this about, oh, I stopped counting after about 15
4 times.

5 Of course, this was in January, and the
6 sun set about 3:32 based on the new height of the
7 building rather than 4:35.

8 CHAIRPERSON MITTEN: Let's see if Ms.
9 Dwyer is satisfied with understanding your
10 methodology.

11 MS. DWYER: I think I understand the
12 methodology. So, it was winter, it was January, and
13 it was loss of an hour. The marks on the windows,
14 were these the first floor windows or the second floor
15 windows?

16 MR. POLLOCK: This is the living space.
17 We live -- in Fort Gaines, these are ranch type houses
18 with the main floor is really the only main floor, and
19 then we have basements.

20 MS. DWYER: All right, so it was the main
21 floor of your house, and it was the winter that you
22 did this analysis?

23 MR. POLLOCK: Right. Of course, we didn't
24 do it in the depth of winter where the sun would set
25 even earlier in the day in December because the

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1 scaffolds weren't up at that time. It remains even
2 today to be about the same amount of time, although
3 the scaffolds were taken down as soon as the hearing
4 started. So, we don't have as accurate a measuring
5 point, but the marks are still there.

6 MS. DWYER: But the sun moves during the
7 course of the year.

8 MR. POLLOCK: Sure it does.

9 MS. DWYER: So what happens in January
10 might not be the same -- it might not be the same loss
11 of time today as it was in January.

12 MR. POLLOCK: No, it's about the same
13 time. Even as the sun has moved up, it's -- I've
14 tried to make sure that it was generally in that area.
15 Of course, the sun is, I think, most needed in the
16 heart of wintertime when you have so little light.

17 MS. DWYER: And this loss of light was
18 from 3:30 to 4:30 in the afternoon?

19 MR. POLLOCK: When we started measuring
20 it, when I started measuring it, it set behind the top
21 of the scaffold at 3:32 in the afternoon, and it set
22 behind the existing swimming pool where it currently
23 would set at 4:35. That was the -- those were, I
24 think, some of the original times.

25 MS. DWYER: Okay. One other question.

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1 You have suggested that in addition to perhaps
2 reducing the height of the building at the rear, that
3 perhaps the University should look at lowering the
4 building. Were you aware from discussions with the
5 University and the architect in the beginning that one
6 of their goals was to maintain the grade along
7 Massachusetts Avenue and not dig in and take out all
8 of the natural grade of Massachusetts Avenue?

9 MR. POLLOCK: Excuse me. The University
10 said that the biggest problem was there was solid
11 rock, and they didn't want to go to the expense of
12 digging through the rock. We did show them how they
13 could -- you know, it's a question here of this down
14 here. This is new.

15 The parking garage, it's very important to
16 the university. They have 550 spaces. We showed them
17 how they could take out, I think it was less than 80,
18 Mike? About 40? Take out about 40 spaces and lower a
19 lot of the activity in their that wouldn't need the
20 type of light, although our architect has shown me
21 some really interesting ideas about how to bring
22 light. What did you say, it went down -- it's gone
23 down as far as 100 feet in some universities, have
24 brought light down that far.

25 MS. DWYER: So, your proposal is to -- do

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1 you have an idea of what the depth is that you're
2 proposing that the building be lowered into the
3 ground, sunk into the ground?

4 MR. POLLOCK: Well, we talked about from
5 the rotunda northwest. We asked over and over again
6 about lowering or relocating that third floor. So,
7 the compromise position was to take just that part of
8 the third floor that was toward the neighborhood on
9 the other side of the skylight.

10 MS. DWYER: And that's what's shown in
11 your drawing? That's the red area shown in your
12 drawing, your compromise? This yellow area?

13 MR. POLLOCK: Well, that's behind my
14 particular home, that's what I would see as a minimum
15 compromise position.

16 MS. DWYER: Okay. All right, thank you.

17 MR. POLLOCK: You're welcome.

18 MS. DWYER: Jane, I have just a couple of
19 questions for you. Are you aware that the height of
20 this building is lower than what would be permitted as
21 a matter of right?

22 MS. KHOURY: I don't really care.

23 MS. DWYER: Okay. Do you know what the
24 height of this building is?

25 MS. KHOURY: Not off the top of my head.

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1 MS. DWYER: Okay, and are you aware that
2 the setbacks in this building are more than what would
3 be required as a matter of right?

4 MS. KHOURY: Again, I don't care.

5 MS. DWYER: All right, and Mr. Cristaldi,
6 I have just one question. I thought you had indicated
7 in your testimony that the University had not made
8 changes to the building as a result of the process?

9 MR. CRISTALDI: The type of changes that
10 were made has really no effect on the visual impact
11 I'm going to have to witness for the rest of my life
12 that I'm living there.

13 MS. DWYER: All right. So, your testimony
14 was not that changes were made but that the changes
15 that were made do not address your concerns?

16 MR. CRISTALDI: Nor do they address the
17 other neighbors' concerns that much. Very little.
18 Two percent change is not enough.

19 MS. DWYER: Okay, thank you.

20 CHAIRPERSON MITTEN: Thank you, Ms. Dwyer.
21 Ms. Hamilton, did you have any questions for these
22 folks? Okay, Ms. Quynn?

23 MS. QUINN: Okay, for Mr. Pollock. Mr.
24 Pollock, you said that you've been a resident of Fort
25 Gaines since 1955, is that right?

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1 MR. POLLOCK: Yes.

2 MS. QUINN: You're dating yourself when
3 you say that. Can you briefly describe how that
4 neighborhood has -- what it was like in 1955 and maybe
5 what the University's presence was at that time?

6 MR. POLLOCK: You're going to go back to
7 that neighbor who loved living next to the University.
8 I think the University fixed his curb or something. I
9 like to fix anyway.

10 What I knew about the neighbor is was
11 moving next to when I moved into Fort Gaines, which is
12 about -- I think the neighborhood is about 50 years
13 old -- according to the dean of students at that time,
14 he told me that the University had less than 1200
15 full-time students.

16 I know the University had a lot more
17 trees. I'm a graduate of the American University. I
18 certainly enjoyed the amazing change of walking across
19 Massachusetts Avenue and going behind those trees, and
20 I was in a different world, and it was lovely.

21 At some point, I guess you always, and you
22 heard it in this hearing. The neighbor is always
23 saying, the University is always saying we were here
24 first, we were here first. That's true, but after
25 about 50 years, isn't there a limit on expansion

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1 impact to the residents that about the University? I
2 mean, I haven't built anything that they've complained
3 about.

4 CHAIRPERSON MITTEN: Well, I think Ms.
5 Quynn's question was not about holding forth on who
6 was there first and so on but just the nature of the
7 University. So, I take it there was less intense
8 development. There were more trees. It was a smaller
9 student body.

10 MR. POLLOCK: Right, and certainly a
11 smaller student body and less traffic. I mean, things
12 have grown all over the place, but I mean, did you
13 want to get an idea of what sort of a neighbor they
14 were?

15 CHAIRPERSON MITTEN: Well, Ms. Quynn, what
16 are you looking for?

17 MS. QUINN: Well, that was my next
18 question, sure. What kind of neighbor has AU been in
19 the 46 years since you've been there.

20 CHAIRPERSON MITTEN: And we want these to
21 be, you know, brief.

22 MR. POLLOCK: Brief, oh.

23 CHAIRPERSON MITTEN: Your neighbors would
24 like to testify tonight while we're still, you know,
25 sort of perky.

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1 MR. POLLOCK: To get the University to do
2 something to correct a problem takes a lot of arm
3 twisting, and sometimes they do and sometimes they
4 don't but I'll give you the examples that to me say
5 that they haven't been the best of neighbors.

6 Imagine yourself waking up one morning to
7 chain saws and looking out your window, and the
8 University is cutting down your fence. You go running
9 out there and say, you're cutting down my fence. They
10 said no, it's our fence. You say excuse me, I put
11 this fence up. As a matter of fact, your mother had
12 just put up a brand new fence. They cut it down.

13 Imagine the University cleaning up its
14 property and has the leaf blowers, and they come down
15 and blow all these leaves and debris into your yard.
16 By the way, they never apologized for cutting down our
17 fence.

18 You have the buses, you know, the Coach
19 buses that bring teams from other places or visitors.

20 Until they found the Westover people more
21 accommodating, they would put the buses there, and
22 they would run all day for air conditioning or run all
23 day to keep the heat up or late into the evening, you
24 have to call and call, can you please at least have
25 them stop the engine. We didn't mind the buses there,

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1 but it's the noise.

2 CHAIRPERSON MITTEN: Is that getting the
3 gist of your --

4 MS. QUINN: That's fine.

5 CHAIRPERSON MITTEN: I think we got that.
6 I think we got that.

7 MR. POLLOCK: How about the front loader
8 and the backhoe?

9 CHAIRPERSON MITTEN: No, no, no, we got
10 it.

11 MR. POLLOCK: Eight o'clock in the
12 morning.

13 CHAIRPERSON MITTEN: Okay, Ms. Quinn?

14 MS. QUINN: I'm finished. Thank you.

15 CHAIRPERSON MITTEN: Okay, thanks. Okay,
16 and Mr. Wilson, did you have any cross examination?

17 MR. WILSON: No, I don't.

18 CHAIRPERSON MITTEN: Okay, thank you. We
19 look forward to the pictures of your exhibit. Thank
20 you, folks.

21 Okay, will the next panel from Fort
22 Gaines. I think it's Andrew Harris. I can't read the
23 last name very well. Florence Seliba and Manuel
24 Fernandez.

25 MR. BILECKY: Florence had to leave. She

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1 gave me power of attorney to read her statement.

2 CHAIRPERSON MITTEN: That's fine.

3 MR. BILECKY: I'll just read it.

4 CHAIRPERSON MITTEN: Is it written? Do
5 you have copies for us?

6 MR. BILECKY: Let me check.

7 CHAIRPERSON MITTEN: Okay. If you have
8 copies, it would be just as easy for us if you would
9 submit it for the record.

10 Okay, Mr. Harris? Is it Harris?

11 MR. HARRIS: Yes.

12 CHAIRPERSON MITTEN: Okay. You need to
13 push the button in the center, and then the little red
14 light will go on. Anybody, help Mr. Harris.

15 MR. HARRIS: My name is Andrew Harris, and
16 I live at 4420 Sedgwick Street, N.W. Our neighborhood
17 borders American University along Sedgwick and 44th
18 Streets. We are aware of the potential benefit from
19 having the Katzen Arts Center located on the Cassell
20 site, but we vehemently oppose the further processing
21 of it as presently designed.

22 Not much has been done by AU to allay this
23 skepticism. We now have an open air, unobstructed
24 sight light from our home. The proposed art gallery
25 and performing arts sections will eliminate this open

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1 view.

2 We weighed the benefit of having the
3 Katzen project and accepted it provisionally.
4 Therefore, we expected compromise from AU relative to
5 the section of the center to be located behind our
6 home. There has been continuous objection to this
7 section since May, 2000.

8 The graduate studio section to be located
9 on the third floor, east of the rotunda, will be
10 approximately 20 feet closer to our home than the
11 existing structure on the site. We have objected
12 strenuously to the full windows shown for this section
13 of the building. Their relationship to our home
14 cannot be shielded, and there is almost an eyeball to
15 eyeball sight line from our family room windows to
16 these windows. During --

17 CHAIRPERSON MITTEN: You accidentally
18 turned off your microphone there.

19 MR. HARRIS: During negotiation with AU,
20 AU's architect stated that the windows could be
21 deleted and supplanted with skylights providing a
22 natural lighting effect AU wanted for the graduate
23 studios. AU apparently has not endorsed this design
24 compromise and has rigidly held to installing the
25 objectionable windows.

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1 Therefore, we urge the Zoning Commission
2 to consider enforcing our objections to the stated
3 windows. Moreover, we request that AU redesign this
4 section of the third floor to either remove it
5 completely or reduce its size, lengthening the
6 distance between it and our home.

7 In my humble conclusion, please be mindful
8 of these potential problems. One, the art center's
9 window and lights facing our home. Secondly, the
10 closeness of the arts center building to our property
11 line. Three, impact of the large arts center parking
12 garage on Ward Circle, Mass Avenue, 45th and 46th.
13 Lastly, students and workmen parking on Sedgwick
14 Street and 44th.

15 May I go on further to say that --

16 CHAIRPERSON MITTEN: You need to summarize
17 now because you're out of time, so another maybe one
18 more thought.

19 MR. HARRIS: Well, a summary would be
20 quick -- not a summary, but just a statement that we
21 have been in negotiations with American University
22 since, serious negotiations since May of 2000. It
23 seems as if the University has not really come across
24 with anything. Dr. Ralph Bunch had serious things to
25 do over in the Middle East during the crises over

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1 there, and they were able at least to get the warring
2 factions to stop firing at each other.

3 It seems as though American U has taken
4 the position, hopefully, I hope this is not true, that
5 we came, we saw, and we conquered. That's the end of
6 my statement.

7 CHAIRPERSON MITTEN: All right, thank you,
8 Mr. Harris. Mr. Bilecky, do you want to read the
9 statement quickly?

10 MR. BILECKY: I'm reading a statement on
11 behalf of Florence Seliba.

12 My home is one of several directly
13 affected by the design of the service drive to the
14 rear of the proposed arts center. Our concerns about
15 noise emanating from the section of the drive behind
16 our homes have not been satisfactorily addressed.

17 The drive is lowered below grade but open
18 at the top. It is proposed to be constructed
19 essentially as a concrete trough. AU has expressed
20 that this design will help shield our homes from the
21 noise of truck traffic. Our perception is that the
22 concrete trough will act more as a resonating
23 amplifier than as a silencer.

24 We've recognized that we are not sound
25 engineering experts and may be voicing an

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1 unsubstantiated concern. However, AU has chosen to
2 ignore our concerns and proposed a design equally
3 unsubstantiated by analysis of the appropriate
4 professional discipline.

5 The lack of attention given to our
6 concerns about the service drive is but one small
7 example of many neighborhood issues that have been
8 ignored by AU. I request that the Zoning Commission
9 withhold further processing of the arts center and
10 direct AU to reach an enforceable agreement with the
11 neighbors for all design aspects of the proposed arts
12 center before they can resubmit for further
13 processing.

14 Signed, Florence Seliba.

15 CHAIRPERSON MITTEN: Thank you. Mr.
16 Fernandez?

17 MR. FERNANDEZ: I have some pictures.

18 CHAIRPERSON MITTEN: You need to turn on
19 your mike if you're going to speak.

20 MR. FERNANDEZ: I have some pictures for
21 you to review.

22 CHAIRPERSON MITTEN: Okay, great.

23 MR. FERNANDEZ: The view from, as one of
24 the neighbors explained, these houses are all ranches.
25 So, the view from the living floor, the main floor,

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1 out to the back yard.

2 CHAIRPERSON MITTEN: Okay.

3 MR. FERNANDEZ: You need to stop that
4 clock.

5 MR. FERNANDEZ: These are identical.

6 CHAIRPERSON MITTEN: Well, give them to
7 staff, and he'll pass them down. You need to stop the
8 clock. I think you just want to restart it.

9 MR. FERNANDEZ: Start?

10 CHAIRPERSON MITTEN: Please.

11 MR. FERNANDEZ: Okay. My name is Manuel
12 Fernandez. I live at 4432 Sedgwick. I've passed out
13 pictures, again, of the view from the house and the
14 main living level, out to the back yard, looking at
15 the Cassell Center, specifically the old pool, what
16 had been the pool building.

17 My wife and I have lived at 4432 for seven
18 years. We bought the house seven years ago with the
19 understanding that AU was a back yard neighbor, and
20 they might wish to replace the Cassell Center, which
21 was even aging at that time.

22 Prior to our purchase, we consulted
23 neighbors, as well as AU's planning office to get a
24 sense of the scale and type of building that we might
25 reasonably expect AU would be allowed to build on the

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1 site. We felt comfortable given the approval of the
2 law school plan for that site at the time about what
3 the scale that we might expect AU could build to
4 replace the Cassell Center.

5 I believe that the proposed Katzen Arts
6 Center has a much larger adverse impact on the
7 neighboring properties than that of the planned law
8 school, and clearly the impact far exceeds that of the
9 existing buildings on the site.

10 I don't see how the residential zoning of
11 the site can accommodate the Katzen Center as it is
12 proposed. However, I think it's possible to find a
13 solution which accommodates both the University's need
14 to use the site, put it to productive use, and the
15 neighbors' desire to live next to a less imposing
16 building than that which is proposed.

17 I don't agree that the current design is
18 the only way to accommodate the programmatic
19 requirements of the arts programs of the University.
20 As many of my neighbors have expressed, I'm opposed to
21 the current design and urge the Commission not to
22 approve it.

23 I'd like to use my remaining time to urge
24 the Commission to review the current campus plan
25 approval process with the goal of crafting effective

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1 enforcement mechanisms. At present, it appears the
2 enforcement mechanism is limited to withholding
3 approval of further processing for any future
4 buildings constructed during the term of the ten-year
5 plan. In the absence of additional construction,
6 there is no effective enforcement mechanism.

7 The University has testified that it did
8 not abide by the terms of the last agreement with the
9 residents. Without an enforcement mechanism, there is
10 no onus on the University or no pressure for it to do
11 so. If there's no onus, clearly compliance with any
12 agreement with the neighbors will have very low
13 priority.

14 If we're going to have good relations with
15 the University going forward into the future,
16 regardless of the decision of the Zoning Commission
17 with regard to this building, the proposed Katzen Arts
18 Center, there has to be some enforcement mechanism.
19 Otherwise, how can we insure that anything that we
20 agreed to, and the neighbors have spent a great deal
21 of time, as well as the University representatives
22 negotiating that that will be complied with.

23 CHAIRPERSON MITTEN: You're out of time.

24 MR. FERNANDEZ: I know. It was timed. It
25 wasn't coincidental.

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1 CHAIRPERSON MITTEN: It was excellent.

2 MR. FERNANDEZ: I know. You're looking at
3 me like he couldn't have finished.

4 CHAIRPERSON MITTEN: Well --

5 MR. FERNANDEZ: He couldn't have finished.
6 I could go on.

7 CHAIRPERSON MITTEN: No, you injected some
8 discipline to the process, so we appreciate that. Any
9 questions from the commissioners? Ms. Dwyer?

10 MS. DWYER: I just have one question for
11 Mr. Fernandez, just as a point of clarification. I
12 think you said that the University said that it did
13 not comply with the conditions of the 1989 plan, and I
14 just wanted to know if you had looked at the record.
15 We had filed a document indicating how every condition
16 had been complied with.

17 MR. FERNANDEZ: That wasn't the -- in
18 testimony before the Commission, I'm not privy to
19 those or haven't seen them.

20 MS. DWYER: Okay. I just wanted to
21 clarify that then. Thank you.

22 MR. FERNANDEZ: So, was that a
23 misstatement during the testimony, or was I -- I
24 didn't hear it correctly?

25 MS. DWYER: I thought your testimony was

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1 that we had not complied.

2 MR. FERNANDEZ: You did before the
3 Commission here. You may have corrected that
4 subsequently, but I was in the hearing, unless I heard
5 that wrong. You admitted that you had not complied
6 with all the terms. I believe that was an exchange
7 with Mr. Herzstein or some other resident.

8 CHAIRPERSON MITTEN: Well, I know that
9 there was some discussion regarding the attempt to
10 control the lights.

11 MS. DWYER: There were lights on one
12 building, but we filed in the record a document
13 indicating all of the conditions and our compliance
14 with that. So, that's in the file.

15 MR. FERNANDEZ: So notwithstanding what
16 you said here when we were all present, later you
17 filed something that said that you were in compliance,
18 notwithstanding the testimony that was given here?
19 Because I don't have that other document and didn't
20 review it.

21 CHAIRPERSON MITTEN: Well, I think Ms.
22 Dwyer is just trying to clarify.

23 MS. DWYER: That's all.

24 CHAIRPERSON MITTEN: What you heard as far
25 as testimony from the Applicant because I believe you

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1 said that the Applicant testified that they did not
2 comply. She's just trying to -- and some folks from
3 the community have asserted that they did not comply,
4 but she's trying to clarify what the University
5 testified to.

6 MR. FERNANDEZ: I'm not an attorney, but I
7 was here, and that's what I heard. So, somewhere
8 there's a confusion because I did hear that. I was
9 here and I was listening.

10 CHAIRPERSON MITTEN: Okay.

11 MR. FERNANDEZ: I did admit, I forget
12 which one of the Commissioners pointed that out.

13 CHAIRPERSON MITTEN: Okay. Well, are you
14 satisfied, Ms. Dwyer?

15 MS. DWYER: Yes.

16 CHAIRPERSON MITTEN: Okay, thank you.
17 Let's see, before you get up. Ms. Hamilton, did you
18 have any cross examination? Please come forward.

19 MS. HAMILTON: In fact, my question is for
20 Mr. Fernandez. You have lived in the property about
21 seven years, you said. When you purchased the
22 property, you backed to the Cassell Center and you
23 factored in that building and what you understood was
24 proposed for that site when you purchased, in your
25 purchase offer. What effect do you think this

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1 proposed arts center will have upon the value of
2 properties on Sedgwick Street?

3 MR. FRANKLIN: It's very hard for me to
4 say because I'm here not solely contemplating or
5 projecting forward what the value of the property
6 would be or if there would be a reduction. My family,
7 we do not intend to move, so my interest here is for
8 the quality of life and the quality of living there.

9 It's not really an economic consideration,
10 so I'm here testifying to that effect. I can't
11 imagine that the scale of the Katzen Center, again,
12 would be attractive to many potential home purchasers.

13 I think it is out of proportion, as some of my
14 neighbors have testified, with the residential nature
15 of Fort Gaines. It's just incongruent.

16 Again, I'm not here to salvage economic
17 value, and I haven't done those projections. It's
18 about the quality of life that we've enjoyed over
19 seven years in Fort Gaines.

20 CHAIRPERSON MITTEN: Thank you, Ms.
21 Hamilton. Ms. Quynn, did you have anything?

22 MS. QUINN: No questions.

23 CHAIRPERSON MITTEN: Mr. Wilson? Mr.
24 Elliott? Mr. Herzstein, any cross? Thank you,
25 gentlemen.

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1 The next panel we'll have is Wesley Egan,
2 Don Myer, Thomas Vonier, and please excuse me if I
3 mispronounced your name.

4 MR. EGAN: Mr. Vonier had to leave.

5 CHAIRPERSON MITTEN: Thank you. Then
6 let's have Mary Bresnahan. Is Mary Bresnahan here?

7 MS. BRESNAHAN: Yes, I am.

8 CHAIRPERSON MITTEN: Oh, okay. Just come
9 forward, and we'll start with Mr. Egan.

10 MR. EGAN: Thank you, Madame Chair.

11 CHAIRPERSON MITTEN: You need to turn on
12 your mike.

13 MR. EGAN: Okay, thank you, Madame Chair.

14 My name is Wes Egan, and my wife and I live within
15 200 feet of the AU Tenley campus at 4204 Yuma Street,
16 a home that we have owned since 1985. Since then, we
17 have watched new families many of them with children,
18 move into these older homes to enjoy and in the
19 process revitalize this urban residential
20 neighborhood.

21 Many, including myself, have invested in
22 renovating and upgrading these single family homes,
23 thereby improving and sustaining the special
24 residential character of this part of the Washington
25 community and the tax base. We have chosen to live in

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1 the District. We support our local public elementary
2 school.

3 We have worked closely with D.C. Park and
4 Recreation authorities to improve the parks in our
5 area, and we welcome the distinctive contribution the
6 public and private educational institutions, including
7 American University, as well as government,
8 diplomatic, and religious institutions make to our
9 city and to our neighborhood.

10 It was in this spirit that the ANC 3-E and
11 specifically, those of us who live within 200 feet of
12 what is now the AU Tenley campus, agreed to support
13 the University's special use request for that campus
14 in 1985, 1986, under conditions which were
15 subsequently recognized in the BZA approval of that
16 request.

17 The concerns that prompted our discussions
18 and negotiated agreement with AU at that time to
19 insure that this property would be used, and I quote,
20 in such a manner that its current the long term
21 impact, and I would like to emphasize the expression
22 long term impact, on the vicinity of the property, is
23 minimized.

24 Those concerns are even greater today.
25 The University's actual and apparently intended use of

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1 this property for controlled private and commercial
2 vehicle access to the property, continued commercial
3 development along Wisconsin Avenue, scheduled bus and
4 unauthorized traffic on Yuma Street and through
5 vehicle and truck traffic on 42nd Street have only
6 increased the pressures and threats against this
7 neighborhood.

8 To construct a three-story, 100,000 square
9 foot building of undetermined use and to more than
10 triple the existing parking on this site, despite the
11 past and current objections of the taxpaying residents
12 in this area and the existence of an agreement
13 negotiated responsibly and in good faith, without
14 which, I might add, the University would never have
15 been granted use of this site, could easily destroy
16 our residential neighborhood as a neighborhood.

17 The old Immaculata School campus now owned
18 by AU was built, scaled, and used in proportion to the
19 size and character of this neighborhood and this part
20 of the city. Those buildings and those who used them
21 did not intrude physically or visually into
22 residential structures or space. Like many other
23 institutions in AU Park, they existed in balance with
24 the single family residential environment.

25 CHAIRPERSON MITTEN: You need to sum up

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1 now, Mr. Egan.

2 MR. EGAN: Project M on that site would
3 destroy that balance. It is not in keeping with the
4 mixed use residential neighborhood of AU Park.
5 Needless to say, we are aware of the impact of the
6 development of other universities on neighborhoods in
7 the District, and as one of your constituents, I would
8 ask that the Zoning Commission disapprove the
9 University's proposal to build on and to substantially
10 alter and expand the use of the Tenleytown campus.

11 Thank you.

12 CHAIRPERSON MITTEN: Thank you, Mr. Egan.

13 Mr. Myer?

14 MR. MYER: Good evening. I would like to
15 associate with Ambassador Egan's comments and simply
16 add that probably the Tenley campus ought to be off
17 the table just like the law school is because the
18 issues are considerably different. The planning
19 issues with regard to the Tenley campus are unique to
20 that particular site because of the tree canopy,
21 because of the historic structures, and the unique
22 separation of the campuses geographically.

23 We have something like four curb cuts on
24 Yuma Street, which I live on. Several loading docks,
25 a couple of parking lots, directly across the street

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1 from two schools, one for primary, one for middle age,
2 one middle school children, and a church. The chaos
3 of 18-wheelers delivering food for the cafeterias, the
4 trucks parked across the sidewalk, the dangerous
5 conditions, generally are unresolved.

6 I would just simply plea that anything
7 that happens on the Tenley campus be dealt with on the
8 basis of excellence in design and planning. I don't
9 see that happening. I see a very, very vague kind of
10 operation there that does not include the entire curb
11 to curb to curb to curb peripheral aspect of good
12 planning that will enhance the environment of both the
13 school and the neighborhood.

14 Thank you.

15 CHAIRPERSON MITTEN: Thank you, Mr. Myer.
16 Ms. Bresnahan.

17 MS. BRESNAHAN: Good evening.

18 CHAIRPERSON MITTEN: You need to turn on
19 the microphone.

20 MS. BRESNAHAN: Sorry. Good evening. I
21 am Mary Bresnahan, and I am a native Washingtonian,
22 and I am also president of the Spring Valley Court
23 Association. I am expressing my opposition to the
24 American University 2000 campus plan and further
25 processing applications, and I am requesting that the

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1 Zoning Commission take no action on the proposed ten
2 year American University plan and further processing
3 applications until the current Department of Defense
4 formerly utilized defense site, DOD FUDS, removal
5 action and remedial investigation is concluded.

6 I'm also requesting that the Commission
7 defer further consideration of the proposed campus
8 plan pending public notice and comment opportunities
9 on the selection of any additional removal actions.
10 The campus plan presents substantial issues not
11 previously considered by the Zoning Commission. The
12 Army Corps of Engineers has expanded their list of
13 points of interest, POI's, and areas needing
14 additional evaluation further into the surrounding
15 neighborhoods.

16 The Zoning Commission should not be taking
17 under consideration or approving small or large scale
18 construction plans for the University when the
19 Department of Health has urged caution in the
20 neighborhood until final tests are completed. The
21 Department of Health has issued protective guidelines
22 which encompass mowing, gardening, and other yard
23 work, consuming vegetables grown in your yard,
24 spending time in your yard, and construction the
25 reason being that moving soil or coming into contact

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1 with soil should be minimized since airborne arsenic
2 can become a health risk. Attachments A, B, and C go
3 into great detail.

4 The federal requirements for removal
5 actions which the Department of Defense has determined
6 will apply to FUDS removal activities require an
7 engineering evaluation cost analysis, EECA, be
8 conducted for the site by the Corps, 40 C.F.R. This
9 EECA must analyze removal alternatives for site
10 remediation and the respective environmental effects
11 and risk reduction benefits of each of those.

12 Some of these typically include
13 institutional controls, i.e., zoning requirements that
14 limit particular uses of the property. No zoning
15 decisions should be made in the interim which preclude
16 selection of the appropriate remedy which the
17 community is entitled to an opportunity to comment
18 prior to any final decision.

19 AU should not be put in the position in
20 which it can rely upon any provision of an approved
21 campus plan to prevent or preclude selection of an
22 appropriate removal action. I am requesting that the
23 Commission cease action on the campus plan until the
24 overreaching environmental remedy has been resolved.

25 The quality of the environment in each

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1 community has an impact on the health of the
2 residents, the health of the city, and the health of
3 property values. I hope for these reasons that AU
4 will join us in agreeing that deferral of Zoning
5 Commission action at this time on the proposed campus
6 plan is appropriate.

7 CHAIRPERSON MITTEN: Thank you, Ms.
8 Bresnahan. Any questions for this panel? Ms. Dwyer?
9 Ms. Hamilton?

10 MS. HAMILTON: My question is for Ms.
11 Bresnahan. Do you have any sense of the time frame on
12 this munitions evaluation removal project or plan?

13 MS. BRESNAHAN: Yes. The Army Corps of
14 Engineers has issued a time frame that is somewhat
15 moveable in that they're forming a RAB, and that RAB
16 will consist of neighborhood representatives to begin
17 that process, and it probably is going to take -- the
18 testing will not be completed for eight months of all
19 1200 properties.

20 MS. HAMILTON: Eight months from when?

21 MS. BRESNAHAN: I believe May, but I'm not
22 positive. I mean, it has been an ongoing process to
23 complete it, but I believe it begins in May. It
24 should be completed, they're hoping, in the late fall,
25 but that the actual remedial action and the removal

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1 probably will be a two-year process.

2 MS. HAMILTON: Thank you.

3 CHAIRPERSON MITTEN: Thank you. Ms.
4 Quynn, any questions? Mr. Wilson? Mr. Elliott? Mr.
5 Herzstein? Thank you all.

6 If we could have now Guy Gwynne, Michael
7 Pollock, Dennis Paul. Mr. Gwynne, please proceed.

8 MR. GWYNNE: I'm Guy Gwynne, president of
9 the D.C. Federation of Citizens Associations. In my
10 brief comment here today, I want to urge the Zoning
11 Commission in the American University case to continue
12 the excellent work BZA has done in getting a grip on
13 the city for the city on the hitherto virtually
14 unregulated campus sprawl systemic problem. We
15 necessarily take a slightly broader view. I'm
16 addressing the American University case.

17 Some of the basic problems facing the
18 Spring Valley, AU Park, Fort Gaines Associations area,
19 all of whom are in the Federation, are the same as
20 those facing residential communities surrounding the
21 Georgetown and George Washington Universities also, as
22 well, we could extrapolate, from that also, Catholic
23 and Gallaudet Universities.

24 Concerning the off-campus student renter
25 numbers, University generated parking problems, noise,

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1 and impedance of normal community turnover, these
2 problems are impacting enough in the American
3 University area and are apparently progressing toward
4 the level of these problems in the Foggy Bottom and
5 Georgetown areas, Parenthetically, I'm from the
6 Berleath area, which is a heavily impacted, virtually
7 destabilized neighborhood because of University impact
8 over the past 18 years, approximately.

9 No other problem besets residential
10 communities in university areas as that of export by
11 universities of unhoused students and the problems
12 that go with the constant fluctuating flooding of
13 thousands of transient young renters in the
14 communities.

15 Next in seriousness is the heretofore
16 ineffectively regulated problem of university campus
17 sprawl and laissez faire buying up of off campus
18 properties. We see that beginning --

19 CHAIRPERSON MITTEN: You have one minute
20 left

21 MR. GWYNNE: I'm speaking for the
22 Federation. I should have five minutes.

23 CHAIRPERSON MITTEN: The way we've broken
24 it down for this is we have three minutes for all
25 persons and then unfortunately you're -- anything you

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1 have that's written we'd be happy to take.

2 MR. GWYNNE: I will be submitting written
3 testimony later.

4 CHAIRPERSON MITTEN: Thank you.
5 Basically, let me just summarize then. As I see it,
6 the American University areas, these excellent basic
7 communities of our tax base in this city, are at a
8 stage now with University impact, approximately where
9 the Georgetown, George Washington areas were between
10 ten and 15 years ago.

11 If the Commission doesn't get a grip on
12 this potential university campus sprawl and constantly
13 rising numbers of students with no housing or very
14 little, inadequate housing on campus, they're going to
15 be virtually destabilized neighborhoods, much like the
16 Berleath case and much like the part of Georgetown
17 down Prospect Avenue.

18 So, this is the time to act.

19 CHAIRPERSON MITTEN: Thank you, Mr.
20 Gwynne. Mr. Pollock?

21 MR. POLLOCK: Thank you, Madame Chair.
22 Tonight and on previous occasions, you have heard, at
23 quite lengthy times, testimony from parties on both
24 sides of the campus plan. I feel I hold a unique view
25 on this issue. As a member of the Fort Gaines

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1 neighborhood, I share the concerns of the residents
2 involved here tonight because they are my neighbors.

3 As a member of the AU student body, I
4 recognize the great benefits this institution provides
5 to its students, to higher education as a whole, and
6 to its neighbors. Through all of the previous
7 meetings, however, one primary party to these
8 proceedings has been underrepresented, and that is the
9 AU student body.

10 This reflects not only on the gulf between
11 students and neighborhood residents, but also shows
12 the lack of information sharing between the students
13 have received from the University. I ask that the
14 Board reject the campus plan as it stands on the
15 grounds that the University has not provided enough
16 detailed description of their plan to either the
17 neighbors or the students.

18 The inconsistencies in this plan are
19 deeply troubling. This echoes the opinion of an
20 overwhelming majority of students, including the
21 student ANC commissioner, many of the student
22 government and student-run organizations. We
23 understand the need for a new arts center. We also
24 note parking is a premium on campus. We pay for it.

25 We are also keenly aware of the need for

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1 additional on campus housing. However, do we need an
2 increased student cap, especially when our residence
3 halls are so full that for the fall of 2000 semester,
4 students were living in lounges on cots. We are, in
5 the view of the Residential Life and Housing
6 Association, running at 105 percent capacity already.

7 Let me wrap up by saying that we, the
8 students, feel AU is a positive institution and a
9 positive force in the neighborhood, and it's not
10 trying to alienate its students or its neighbors. We
11 know the University is making an effort, but the
12 issues at stake here are too important for the
13 University to fudge.

14 Let me reiterate. One, the student cap
15 increase. Is it necessary, and do we have the room
16 for it, and is there any information on square footage
17 per student and how that would be affected by the
18 increase of a student cap. Two, the lack of info to
19 students, many of whom don't know about these
20 proceedings at all. Three, the inconsistencies on
21 what buildings, what size, what usage, and what types
22 of funding they might get, or will they be built at
23 all.

24 Four, if one part of this plan is not
25 approved, then other parts of it will fail as well,

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1 specifically, parking. If the Bender Arena lot is
2 closed and approved, which doesn't seem to be a big
3 problem, they are going to need 466 more spaces on
4 campus. Where are they going to put it and how will
5 they get it out there before they park in the
6 neighborhoods.

7 CHAIRPERSON MITTEN: Can you summarize?

8 MR. POLLOCK: Thank you. I'm all done.

9 CHAIRPERSON MITTEN: Very good, thank you.

10 Mr. Paul?

11 MR. PAUL: My name is Dennis Paul. My
12 home is on University Avenue, which borders American
13 University on the west. The homes on University have
14 a view of the tennis courts, the athletic field, the
15 track, the current bleachers. Beyond and clearly
16 visible are Leonard Dorm, the sports center, the
17 sports center garage, the two heating plant
18 smokestacks, the Asbury buildings, the Osborne
19 buildings, the Beagley building, and the Letts
20 Anderson Centennial Dorms.

21 During the 1989 campus plan negotiations,
22 we were assured that in three to five years, the
23 proposed landscape buffer would screen the campus
24 buildings from our homes, and I have attached some
25 pictures on tab four in your binder. In project C,

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1 the University is proposing to replace the Osborne
2 building with another which would include on its roof
3 bleachers for spectators.

4 These bleachers would face west, meaning
5 the noise from spectators and sound system would be
6 directed toward our homes. Currently when events,
7 athletic or otherwise, take place in that area, a
8 simplistic sound system is set up at ground level
9 facing west. The transmission is heard loud and
10 inside our homes. Placing bleachers facing west and
11 most likely including a sophisticated sound system
12 would be an intrusion and is not acceptable to the
13 adjacent neighbors.

14 The noise level from persons cheering,
15 booing, seated in the current bleachers facing east is
16 tolerable because their voices are directed away from
17 our homes. The University has stated that normally
18 two to 300 persons attend the athletic events, and at
19 a hotly contested game, five to 800. Therefore, the
20 current bleachers are quite adequate.

21 We are concerned that increasing the
22 bleacher seating will change the nature and number of
23 events held in this area and create an inappropriate
24 impact on the adjacent homes. There is a great deal
25 of green space surrounding the athletic field and

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1 track where spectators may sit, if needed.

2 Reducing the proposed bleachers to 500
3 seats is not an acceptable response. The noise would
4 still be highly objectionable. The bleachers must be
5 deleted from the plan. We understand the University's
6 desire to enhance its facilities.

7 However, we do not believe the quality of
8 life for our families and neighbors should be
9 compromised to satisfy those desires or goals. The
10 University's efforts to improve the convenience of
11 seating at sports events cannot justify the diminution
12 of the neighbors' quality of life and decrease
13 property values.

14 In project F, the University proposes to
15 replace the Asbury building. Clearly visible from the
16 yards and homes on University Avenue, the proposed
17 replacement will be twice the size of the current
18 buildings. Taller than the sports center, after
19 darkness will create additional lighted windows
20 visible to the neighbors' homes. We are concerned
21 with noise from equipment.

22 Currently during warm months, air
23 conditioning equipment from buildings can be heard
24 from our open windows. We propose maintaining the
25 height of the present building and enclosing the

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1 courtyard area to create additional space. Even
2 though the sports center garage would be partially
3 hidden from the homes, if building F is built as
4 proposed, creating more mass and density is not a
5 desirable effect. It would be preferable to have a
6 lower structure creating a step-down appearance.

7 CHAIRPERSON MITTEN: Mr. Paul, are you
8 going to summarize?

9 MR. PAUL: That's it.

10 CHAIRPERSON MITTEN: Okay.

11 MR. PAUL: You got it.

12 CHAIRPERSON MITTEN: Very good, thank you.

13 Any questions for these folks? Ms Dwyer? Ms.
14 Hamilton? Ms. Quynn? Wilson? Elliott?

15 MR. ELLIOTT: Just one question, Mr. Paul.
16 Your testimony is under tab four here, and I wonder
17 if you could just explain to the Commission this one
18 picture. Stand up, if you would. You have a little
19 caption on it. I'll move closer. What is this?

20 MR. PAUL: That's a picture of the sports
21 center across the street from our home.

22 MR. ELLIOTT: And where do the bleachers
23 go?

24 MR. PAUL: The bleachers would go
25 approximately over here, and I understand slightly

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1 elevated.

2 MR. ELLIOTT: You're indicating over to
3 the right?

4 MR. PAUL: Yes, sir.

5 MR. ELLIOTT: And this is a view from
6 where?

7 MR. PAUL: Directly across the street from
8 my house and other houses, not just my house.

9 MR. ELLIOTT: Thank you.

10 CHAIRPERSON MITTEN: Thank you. Mr.
11 Herzstein, anything?

12 MR. HERZSTEIN: I also wanted to ask you
13 to explain pictures one, two, three, and four, if you
14 could. Where were those taken from and what do they
15 show?

16 MR. PAUL: Well, there are three houses,
17 three primarily houses. I guess 37 -- my house and
18 the next three houses down, show this area.

19 MR. HERZSTEIN: These were from those
20 houses, is that what you're saying?

21 MR. PAUL: Yes, sir, they were, that's
22 correct.

23 MR. HERZSTEIN: And that's the existing
24 vegetation, is that correct?

25 MR. PAUL: Absolutely.

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1 MR. HERZSTEIN: And the same with five and
2 six?

3 MR. PAUL: Absolutely.

4 MR. HERZSTEIN: Thank you.

5 CHAIRPERSON MITTEN: Thank you very much.

6 MR. HERZSTEIN: Mr. Paul, you also
7 attached some historical materials to your exhibit.
8 What was the purpose of that?

9 MR. PAUL: About Battery Gaines? Well, I
10 just thought it was interesting. I'm not a historian,
11 but I understand that Battery Gaines was a flanked
12 fort, I think protecting the blind side of Fort Reno.
13 None of us knew exactly where it was, and going to
14 the National Archives, and I think there's something
15 that's enclosed in your folder there. It shows that
16 the battery itself was where the swimming pool is,
17 actually, on an angle looking towards River Road.

18 The amazing thing about that is, I'll just
19 mention this just for your interest. Most of you, I
20 presume, have seen the movie Patton. Do you remember
21 when Patton was standing on top of the mountain and he
22 was looking down and he said, "I was there a thousand
23 years ago." It was amazing, when I was on the
24 opposite side of the -- actually, looking towards Fort
25 Gaines on the service road there, it looks as if that

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1 part of the property was not graded. The natural
2 grade was there.

3 From there, you can almost see through
4 Bethesda. I mean, you can see River Road. You can
5 see the Kenwood Apartment buildings. If those
6 buildings weren't there, you could actually see the
7 town of Bethesda.

8 What I think is amazing, and perhaps Mr.
9 Parsons, since you're with the National Capital Park
10 Service, or you're involved with that, I wonder if
11 some of those -- where they graded the swimming pool,
12 I imagine there's not relics left, but where the
13 service road is, that natural elevation, the high peak
14 there, I wonder if maybe there should be an
15 archeological study to see if there are any relics
16 there that might be of interest to all.

17 CHAIRPERSON MITTEN: Well, we appreciate
18 having that called to our attention by both Mr. Paul
19 and Ms. Khoury and having the historical information
20 shared with us. I believe there is an archeologist
21 for the District of Columbia. So, we may be calling
22 on her services. Thank you all.

23 Heather Byrne, Anthony Byrne, William
24 Culver. Are you the Byrnes?

25 MR. BYRNES: Yes.

1 CHAIRPERSON MITTEN: Mr. Culver, is he --

2 MR. BYRNES: I believe he left.

3 CHAIRPERSON MITTEN: He left, okay.
4 Whenever you're ready.

5 MS. BYRNES: Okay. Madame Chair, members
6 of the Zoning Commission, my name is Heather Jean
7 Byrne, and I reside at 4205 Warren Street, within 200
8 feet of the Tenley campus. I sent a letter to the
9 Zoning Commission on March 29, and I want to speak to
10 this.

11 On April 13, 2000, I attended the ANC 3-E
12 meeting at which Mr. Taylor presented AU's campus
13 plan. This presentation focused mainly on the Katzen
14 Arts Center project and the recent acquisition of
15 commercial property on Wisconsin Avenue and Van Ness
16 Street.

17 When no mention of plans for the Tenley
18 campus had been made, I asked a question towards the
19 end of the presentation. I pointed out that Mr.
20 Taylor had talked about the proposed Katzen Arts
21 Center and the plans for the commercial property, but
22 he had made no mention of what was proposed for the
23 Tenley campus. He replied that the Semester in
24 Washington program was presently on the campus, but
25 numbers were falling, and AU may have to reconsider

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1 this program.

2 He said there was nothing designed as a
3 replacement program at that moment. He added that
4 there may be some changes to the buildings, that that
5 was the extent of what was in the future for the
6 Tenley campus. Knowing there was an agreement with AU
7 over the use of the Tenley campus, I assumed that any
8 changes to the buildings would be minor renovations.
9 I did not realize that the building changes envisaged
10 were of a major nature involving a three story,
11 100,000 square foot building with an underground car
12 park for 250 cars.

13 AU made no attempt to contact anyone who
14 lived within 200 feet of the Tenley campus to discuss
15 this change to the campus. They were in consultation
16 with various groups over the main campus plan. I
17 think because they were consulting with the AU Park
18 Citizens Association, they felt this covered Tenley
19 campus residents.

20 As Mr. Ruttenberg confirmed this evening,
21 residents within 200 feet of the Tenley campus are not
22 members of the AU Park Citizens Association nor,
23 because of the boundaries of this association, can
24 they become members. Project M was already on the
25 campus plan when Mr. Taylor made his presentation, but

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1 he did not disclose this.

2 No effort was made to talk to the
3 neighbors who surround this residential campus in a
4 good faith manner, either immediately after the April
5 13 ANC 3-E meeting or in the following months. It
6 appears that AU chose to ignore an agreement limiting
7 changes to the campus, and then attempted to
8 stealthily accomplish a complete change on the Tenley
9 campus by planning to nearly double the intensity of
10 use.

11 CHAIRPERSON MITTEN: Thank you. Mr.
12 Byrne?

13 MR. BYRNE: Madame Chair and members of
14 the Zoning Commission. I am Anthony Byrne, and I live
15 at 4205 Warren Street, N.W. I'm a member of the
16 Tenley Campus Neighbors Association, which I refer to
17 as TCNA in my testimony. I'll provide some background
18 of the campus from a resident's viewpoint.

19 Half of the 45 TCNA households either face
20 or look directly into the Tenley campus from 42nd
21 Street, Yuma Street, Nebraska Avenue, and Warren
22 Street. While these households look into the campus,
23 the inhabitants of the campus look out straight into
24 many of our front yards. Project M, being three
25 stories high and 100,000 square feet with 200

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1 additional residents, would be objectionable for this
2 an other reasons.

3 TCNA's closeness to the campus is one of
4 the main reasons why, when AU was negotiating to buy
5 the Tenley campus, the May 13, 1986 agreement was
6 negotiated with AU. Among the reasons for protecting
7 this residential area and limiting AU's use of the
8 campus were that the existing buildings are sited in
9 such a way as to afford some degree of privacy to the
10 neighbors and are not too objectionable, but no new
11 buildings were to be built.

12 Second, the existing conditions in 1986,
13 resulting from the daily movement of large numbers of
14 elementary students in the neighborhood, and the
15 resulting congested traffic and parking problems,
16 should not be made worse by AU increasing the number
17 of students and staff. The conditions stated in the
18 agreement were not arrived at by chance, but stemmed
19 from the low intensity use of the property by the
20 Immaculata Girls Schools, and the way existing
21 conditions already had a serious impact on the
22 neighborhood. This school provided the upper
23 threshold for intensity of use acceptable to TCNA.

24 The TCNA needs an operating agreement with
25 AU so that AU deals with TCNA in good faith. The

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1 present agreement provides the only means of insuring
2 that AU and its students behave reasonably as
3 neighbors. As a neighbor over the last 15 years, AU
4 has breached at least five clauses of our agreement.

5 TCNA raised no objections until February
6 of this year. With Project M, it was made clear to us
7 that AU had decided the agreement was no longer in
8 effect and that they did not intend to negotiate any
9 changes with us in good faith as promised.

10 In closing, I have forwarded two petitions
11 under covers that are dated March 27, 2001, and I
12 wrote on a separate matter on April 4. The first
13 petition, signed by 220 neighbors, provided evidence
14 of our community's objections to AU's proposed project
15 M and requested that our agreement be carried forward.

16 The second petition, signed by 37 TCNA
17 residents and the Catholic Archdiocese, cited the lack
18 of receipt by TCNA of the BZA notice for the BZA
19 December 12, 2000 meeting. There has been no
20 satisfactory explanation for this omission.

21 CHAIRPERSON MITTEN: Can you summarize
22 now, Mr. Byrne?

23 MR. BYRNE: I've just finished. My letter
24 of April 4 notes that AU failed to post on the Tenley
25 campus the hearing notice sign that's required 15 days

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1 prior to that meeting by D.C. regulations. Either of
2 these notices would have allowed the TCNA to take
3 timely action to apply for party status to these
4 hearings. I therefore ask that project M not be
5 approved by the Zoning Commission.

6 Thank you.

7 CHAIRPERSON MITTEN: Thank you. Any
8 questions for the Byrnes? Ms. Dwyer? Thank you. Ms.
9 Hamilton? Ms. Quynn? Mr. Wilson? Oh, Ms. Quynn,
10 sorry.

11 MS. QUYNN: Either Mr. or Mrs. Byrne can
12 answer this. It's just along the same lines that I
13 asked Mr. Pollock. How long have you lived around the
14 Tenley campus?

15 MR. BYRNE: It's just about 18 years.

16 MS. QUYNN: Eighteen years?

17 MR. BYRNES: Yes.

18 MS. QUYNN: Okay, and then can you
19 elaborate how that area has changed, or if it hasn't
20 changed during that time?

21 MS. BYRNES: When we moved in, there were
22 a lot of, shall I say, more elderly residents, perhaps
23 people more our age in the neighborhood. When we went
24 in, we were in our particular area, about the only
25 couple with young children. The composition has

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1 changed considerably. There are now a lot of families
2 with young children, and I think there has been a big
3 growth in the development of these children attending
4 the schools, which we see with the constant congestion
5 that seems to arise, especially with the Janne School
6 and the St. Annes School on Yuma Street and the
7 entrance to the Janne School off of Yuma Street there
8 and Albemarle Street with the Janne School at the
9 time.

10 We've also, I think, seen somewhat more
11 commercialization along Wisconsin Avenue, but I feel
12 that the area still is predominantly a residential
13 area in this way with the sort of charm of the Tenley
14 campus being the treed area and the sort of more park-
15 like area, and especially down the Warren Street side
16 of Tenley campus.

17 MS. QUINN: Mr. Byrne, you mentioned the
18 agreement and then the five breaches. Can you
19 describe what you feel those are?

20 MR. BYRNE: Well, one of the clauses of
21 the agreement, I think it's clause three, is that
22 there are to be no new structures, and in fact,
23 American University has constructed what looks like a
24 small garage or a tool shed on the back of the campus
25 facing 42nd Street.

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1 The agreement also has quite clear
2 prohibitions on student vehicles and parking, but
3 Warren Street has just become a haven for long-term
4 parking by the students. I don't know how they don't
5 get booked, but there is certainly no policing by the
6 University, and for some reason the D.C. government
7 doesn't book them.

8 There was also a clause, I think clause
9 seven, prohibited left-hand turns out onto Yuma Street
10 so that traffic from the University wasn't coming into
11 the neighborhood, and that was upheld for quite a long
12 while, and there was a traffic arm that actually
13 stopped that happening. Within that last year, that
14 was dismantled, so traffic just comes left into the
15 neighborhood all the time.

16 There was a clause about cleaning up
17 debris and refuse on the campus, and Warren Street has
18 just been a disgrace as it runs down to Nebraska for
19 weeks. There's just been garbage everywhere.

20 I think the final breach was the fact that
21 we didn't have any discussions or negotiations wherein
22 American University decided to terminate this
23 agreement. They did it sort of unilaterally.

24 MS. QUINN: That's all that I had.

25 CHAIRPERSON MITTEN: Thank you. Mr.

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1 Elliott?

2 MR. ELLIOTT: Is there a population cap
3 for that campus in the agreement, and was it violated?

4 MR. BYRNE: There was a population cap, I
5 think, of 500 students and 450 for accommodation
6 within that 500. There was, I think, 125 staff, and
7 76 parking spaces. I think I've got that right. I
8 really don't know whether it's been exceeded or not.
9 American University can probably answer that.

10 CHAIRPERSON MITTEN: Thank you. Anything
11 else, Mr. Elliott?

12 MR. ELLIOTT: No, thank you.

13 CHAIRPERSON MITTEN: And Mr. Wilson, did I
14 skip you over? Okay. Mr. Herzstein? Thank you all.

15 Now, were there any other persons in
16 opposition that didn't get their names onto the list?
17 Come forward, please. Please state your name for the
18 record.

19 MR. HAMILTON: The name is Charles
20 Hamilton. I am surprised that I'm not on the list,
21 for the simple reason that I filed my intention to
22 appear the first session when these proceedings began,
23 and supplied the Commission with 15 copies of my
24 statement.

25 CHAIRPERSON MITTEN: This was just a list

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1 that we had tonight for whoever was present, but
2 please proceed.

3 MR. HAMILTON: All right. My statement
4 that you have before you of the Washington University
5 St. Louis plan overlay is instructive, and it shows
6 the positive result of long-term attention to planning
7 in an institution located in an urban residential
8 environment similar to that of American University.
9 Two institutions have a similar problem planning for
10 growth and expansion.

11 One is looking to other sites to meet
12 future academic requirements and one merely thinks in
13 terms of overbuilding without specifics. The
14 community's insistence on a population cap is
15 important, as it sets limits and forces considerations
16 of other options for the future.

17 AU's request for flexibility is basically
18 a license to do whatever it pleases at the expense of
19 the community. There are no development guidelines
20 mentioned in the proposed plan. Specific building
21 uses such as administrative and academic are too
22 vague. What is to be intended use, why, and when
23 needed, such factors as mass, siting, lighting,
24 windows, design parameters, appearance, and noise
25 reduction, landscaping, and hours of operations are

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1 missing in some cases.

2 There is no assessment on the
3 environmental impact, particularly on the future
4 construction on a former World War I weapons area.
5 There needs to be a third way with the arts center to
6 get what could be a distinct cultural amenity of value
7 to our whole community, right. If redesign or
8 relocation of the site is necessary, so be it.

9 When one looks closely at the mass of the
10 current design, its negative impact on the residential
11 community of Fort Gaines, it's overpowering. That is
12 in addition to the canyon effect which seems to be
13 dismissed. No one has answered the question of why
14 the Nebraska Avenue parking lot site was not
15 considered.

16 For these reasons, the plan needs to be
17 remanded back to AU for further work. This plan
18 represents the first such view by the Zoning
19 Commission. It affords it an opportunity to encourage
20 the university to get serious and stop wasting the
21 community's time and engage in a constructive effort
22 that will be beneficial to the parties and the
23 District of Columbia at large.

24 The community achieved its goals in 1989
25 in a creative manner, and I believe it can do it

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1 again.

2 CHAIRPERSON MITTEN: Thank you, Mr.
3 Hamilton. Please state your name for the record.

4 MR. ALPHONSO: My name is Joseph Alphonso.
5 I work for Mr. Elliott. Mr. Elliott asked me to
6 determine the size of WalMart and K-Mart. I have
7 measured the WalMart and K-Mart in Manassas on Route
8 234. The WalMart building --

9 CHAIRPERSON MITTEN: What's the relevance
10 of this?

11 MR. ELLIOTT: He can just submit it for
12 the record.

13 CHAIRPERSON MITTEN: That would be
14 wonderful.

15 MR. ELLIOTT: It's at tab 16.

16 CHAIRPERSON MITTEN: Some of us have to
17 catch the Metro at midnight, so we really would like
18 to just get going.

19 MR. ELLIOTT: It was only 20 seconds
20 longer, but that's fine.

21 CHAIRPERSON MITTEN: If we could just have
22 that in writing, that's fine. So we have that.

23 MR. ELLIOTT: Tab 16, and Madame Chair,
24 Mr. Hamilton's statement is at tab seven. The full
25 statement is longer.

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1 CHAIRPERSON MITTEN: Thank you. Any
2 questions for Mr. Hamilton? Any questions, anybody?
3 Raise your hand. Okay.

4 I don't believe we've asked for any
5 additional information to be submitted, although we
6 would look forward to getting the testimony of the
7 students who have conditional support, want to offer
8 conditional support. Is there anything else that's
9 open?

10 SECRETARY BASTIDA: No, there is nothing
11 else. I just want to remind that the individuals that
12 are planning to submit any additional information,
13 that the record probably would be open until the 19th
14 of April, unless the Commissioners request some
15 information, and then there would be window of
16 opportunity with set times to provide that
17 information. Thank you.

18 MS. DWYER: Madame Chair, just one
19 question. The hearing on the 19th will begin with the
20 cross examination by --

21 CHAIRPERSON MITTEN: Mr. Wilson.

22 MS. DWYER: By Mr. Wilson, followed by his
23 testimony.

24 CHAIRPERSON MITTEN: Followed by your
25 rebuttal.

1 MS. DWYER: Followed by rebuttal.

2 CHAIRPERSON MITTEN: Yes. Okay, Mr.
3 Elliott?

4 MR. ELLIOTT: I didn't quite follow the
5 window of opportunity of Mr. Bastida. I'm sorry.
6 It's late in the day.

7 CHAIRPERSON MITTEN: He was saying that
8 the record will be open until at least the 19th
9 because we're not done yet, okay?

10 MR. ELLIOTT: All right.

11 CHAIRPERSON MITTEN: Great. Thank you all
12 for coming, and thank you for your patience. We will
13 reconvene this hearing April 19, 7:00 p.m.

14 (Whereupon, the above-entitled matter was
15 concluded at 11:39 p.m.)

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